Payment Systems Regulator

Policy statement

PSR regulatory fees

April 2023

PS23/2

Contents

1 Introduction and executive summary

This chapter gives an overview of the proposals set out in our recent consultation paper (CP22/6), the responses we received from industry, and our final decision on changes to the PSR's regulatory fees.

It also provides an overview of the structure of this publication.

Executive summary

1.1 This paper sets out our decisions on changes to our fees structure for the 2023/24 year and beyond, following careful review of the responses to our recent consultation paper *PSR regulatory fees* (CP22/6).

1.2 We consulted on two proposed changes to our fees policy: the introduction of a minimum yearly fee threshold of £100 for payment service providers (PSPs) regulated by the PSR, and a special project fee for payment system operators (PSOs) for work specifically related to those with a for-profit business model.

1.3 Having considered all responses to the consultation, we have decided to implement our proposal for a minimum yearly fee threshold of £100, using existing provisions from the FCA Handbook FEES 9.2. This will provide time and cost savings to small fee payers, reducing administration and freeing up our time for more productive activities.

1.4 We have also decided to implement a special project fee for PSOs, with a narrower scope than we originally proposed. We will charge these fees only for work we carry out relating to the designation of a new regulated payment system under the Payment Services Regulations. This will be implemented by adapting the FCA Handbook FEES 9. This will provide us with a fair mechanism to charge PSOs for work specifically relating to their designation and/or for regulatory work relating to or emanating from their designation, in line with other regulators.

1.5 The new fee rules will come into force on 28 April 2023.

Background

1.6 The PSR is an independent subsidiary of the Financial Conduct Authority (FCA), which collects fees to fund our work. This enables us to pursue our statutory objectives, and achieve the outcomes we set out in our five-year Strategy in January 2022.

1.7 We adopted our current fees structure in 2018/19 (as outlined in our policy statement PS18/12). The current fees apply to all PSPs regardless of size, so some small PSPs have been paying us fees lower than £100 each year. This means that we have been invoicing and collecting very small sums of money, which is not an efficient use of resources, either for us or the affected PSPs.

1.8 Furthermore, the rules did not include specific provisions to ensure that PSOs contribute to the cost of special project work that affects them. Examples of these projects include the PSR's ongoing card fees market reviews and the work required when new payment systems such as Fnality are designated to us.

1.9 As a result, we set out two proposals to change our fees policy in CP22/6.

- **Proposal 1:** A minimum fee threshold of £100.
- **Proposal 2:** A mechanism to charge special project fees.

1.10 The detail surrounding these proposals is set out in Chapter 3 of CP22/6, and discussed further in Chapter 2 of this statement.

1.11 We consulted on both proposals from 13 December 2022 to 3 February 2023 as CP22/6.

1.12 We received eight responses from industry, which showed broad support for Proposal 1. Proposal 2 received a more mixed response, with some respondents supportive, while others raised concerns around transparency and accountability, given the proposal could apply to any special project.[1]

1.13 We carefully considered all the responses from industry and, in light of the feedback, have decided to:

- proceed with Proposal 1
- amend Proposal 2, charging special project fees only for work related to new designations of PSOs

1.14 These changes should be regarded as an interim step, pending a wider review of our fees structure in due course. This review may revisit a broader special project fee mechanism.

The structure of this publication

1.15 The rest of this document is structured as follows:

- **Chapter 2** details the responses received to CP22/6 and our views.
- **Chapter 3** outlines our decisions on changes to the PSR fees structure for the 2023/24 year and beyond.

1 We received responses from EFL Payments, HSBC, Visa, Mastercard, Mettle, NatWest, LINK and Pay.UK.

2 Responses to our consultation and our views

This chapter summarises the responses we received to our recent consultation paper CP22/6 and our views on those responses.

The responses we received for each proposal are presented separately, divided into responses 'for' and 'against'. Our views consider the full set of responses to each proposal as a whole.

Proposal 1: A minimum fee threshold of £100

2.1 The fee for PSPs is currently generated based on each PSP's market share of transaction volume and value. This approach means that some PSPs have an annual PSR invoice of less than £100.

2.2 We proposed to introduce a minimum yearly fee threshold of £100 for PSPs regulated by the PSR, to save time and costs for small fee payers, while freeing up our time for more productive activities.

2.3 We stated that we would implement this proposal, if approved, using existing provisions from the FCA Handbook FEES 9.2.

Consultation responses

2.4 Six respondents submitted comments on Proposal 1.

2.5 The response was mostly positive, with five respondents being supportive of the proposal and one not supportive.

2.6 Several respondents highlighted that they felt the change would represent a pragmatic approach to fee allocation and collection. One respondent asked for clarification on the impact of the change on their fees in the 2023/24 year. One said they would expect us to monitor the number of exempt firms to ensure that any reallocation of fees does not become disproportionate. One respondent stated that they did not believe that there should be an exemption for those paying lower fees as it is fairer for everyone to pay their respective share.

Our views

2.7 We still consider that this proposal will reduce the financial and administrative burden on small fee payers, and save us and the FCA valuable time.

2.8 For example, in 2022/23, 46 of the 238 fee payers paid under £100, collectively paying £1,842, an average of just over £40 each. Changing the fee structure to eliminate invoices of under £100 would simplify our administrative procedures and improve the efficiency of the process.

2.9 We do not anticipate that this change will create significant additional costs for us or the industry as a whole. Costs for fee payers below the threshold will fall, while costs for the remaining fee payers will increase by a modest amount.

2.10 For reference, if a £100 threshold had been used in 2022/23, costs for fee payers above the threshold would have increased by around 0.01% each – less than £10 on average.

2.11 We will continue to monitor the number of exempt firms in future years to ensure that the reallocation of fees does not disproportionately affect firms above the threshold.

Proposal 2: A mechanism to charge special project fees

2.12 We proposed to charge special project fees where appropriate to fund one-off or significant activities that may be time-limited and require additional resources, and which apply to one or more PSOs. This would enable us to scale our resources effectively.

2.13 We stated that we would implement this change, if approved, by adapting the FCA Handbook FEES 9.

Consultation responses

2.14 Six respondents submitted comments on Proposal 2.

2.15 Response sentiment was mixed, with three respondents broadly supportive of the proposal and three not supportive.

2.16 One of the respondents said they expected the mechanism to be used in a limited way, and that they would expect us to predict and estimate what projects might be needed from emerging trends. This would make special project fees more predictable. Another respondent in favour wanted us to be clearer that special project fees would not apply to not-for-profit PSOs.

2.17 Three respondents raised concerns around the consultation timeline, the mechanisms for assigning special project fees, differences with other regulators, and the consistency of the proposal with our principles and the Financial Services and Markets Act (FSMA). The main arguments against the proposal were as follows.

Timescale

2.18 Some respondents were concerned about the proposed timescales for the introduction of the special project fee mechanism and approach to consultation, highlighting that we did not present other options in CP22/6.

Assigning special projects

2.19 Some respondents were concerned that the proposed special project fees regime would represent an open-ended, ambiguous funding model without appropriate checks and balances, allowing us to assign fees wherever we see fit.

2.20 One respondent stated that they would want an industry representative group to discuss and agree which special projects are designated.

2.21 One respondent stated that they thought it would be fairer for special project fees to apply to all relevant PSOs, irrespective of business models – that is, that they should apply to both for-profit and not-for-profit PSOs. They stated that they did not believe that whether or not these fees need to be passed on with VAT is a relevant consideration.

Comparisons to other regulators

2.22 One respondent argued that the proposal was out of line with other financial, economic and competition regulators. The key concerns raised here were as follows:

a. We proposed to charge special project fees to cover the costs of work undertaken on our own initiative. They argued that this is different to the FCA and Prudential Regulation Authority (PRA), which levy special project fees in response to a firm's action or failure to take specific action.

b. Special project fees would likely make up a much larger proportion of our budget than other regulators, notably the FCA and PRA.

c. We had not published or committed to publishing a rate card for special projects, unlike the FCA, PRA and Bank of England (BoE).

d. We were not committing to consulting with PSOs on the nature or value of a special project fee.

PSR principles

2.23 Respondents argued that the PSR had contradicted its principles because:

a. We stated in our consultation paper CP17/44 that we would not allocate fees based on the amount of regulatory oversight or resources spent on particular systems or participants, but this proposal would require us to do that.

b. We had previously committed to sustainability and long-term stability of the allocation method, but this proposal did not appear to be sustainable or predictable, given fees would apply as and when special projects arose, although they would be time limited.

c. We had committed to promoting competition and innovation, but this proposal would apply only to for-profit PSOs and could therefore distort the market – leaving for-profit PSOs with fewer resources to compete and innovate than not-for-profit PSOs.

FSMA principles

2.24 One respondent also rejected our assessment that the proposal is compatible with the principles set out in Section 3B of FSMA, arguing that:

a. Levying special project fees could disincentivise us to use our resources efficiently and economically.

b. Levying potentially unlimited fees on PSOs would not be proportionate to the potential outcome of any review. Fees for market reviews should apply to all market participants and not just PSOs.

c. The market power of PSOs is not substantiated or relevant.

d. As the annual funding requirement (AFR) process is not subject to public scrutiny or consultation, the special projects process, which would follow the AFR process, would not provide an adequate level of transparency.

e. It would not offer industry stakeholders an opportunity to engage in advance of a decision to levy a special project fee.

Our views

2.25 As stated in CP22/6, we believe that a special project fee will enable us to distribute our costs more fairly across industry by providing a mechanism to charge new PSOs for work related to or consequent on their designation. PSOs do not currently contribute to the PSR's regulatory costs.

2.26 Our responses to the points raised by respondents are as follows:

Timescale

2.27 We accommodate all requests for time extensions from industry, to ensure all market participants had the opportunity to respond to the CP22/6. We have followed all required processes through the PSR and FCA, and no responsibilities have been overlooked.

Assigning special projects

2.28 The special project fee is proposed to align with the current established budgetary process. We do not propose to avoid or circumvent the current annual budgetary cycle.

2.29 Our board, the FCA board, the PRA and the Treasury all provide oversight of this process, and we expect special project proposals to receive the same level of scrutiny as any other PSR project. The oversight of a project will therefore be consistent regardless of whether it is funded through the AFR or as a special project.

2.30 However, we recognise respondents' concerns around how special project fees are assigned, in particular how projects are defined.

Comparison to other regulators

2.31 Our proposal does have some differences to the special project policies of other regulators. This is to be expected as the PSR is a separate entity with a different set of statutory obligations.

2.32 However, we recognise respondents' concerns around how special project fees are scoped and costed (i.e. the rates applied).

FSMA principles

2.33 We recognise that levying special project fees would constitute a change in approach and have explained in Chapter 4 of CP22/6 why we believe this is compatible with the principles set out in Section 3B of FSMA.

3 Our decision

This chapter sets out our final decisions on Proposal 1 and Proposal 2, in consideration of the responses received and set out in Chapter 2. It also gives an overview of how the mechanisms we have approved would work in practice.

Introduction

3.1 In reaching our final decisions on Proposal 1 and Proposal 2, we have considered all the responses provided to us on consultation paper CP22/6.

Proposal 1: A minimum fee threshold of £100

Our decision

3.2 We have decided to proceed with the proposal outlined in CP22/6. We will introduce a minimum threshold of £100 for issuing fees to PSPs regulated by the PSR, using existing provisions from the FCA Handbook FEES 9.2.

3.3 This change to our fees policy will take effect in 2023/24.

Payers

3.4 This change applies to all payers currently in scope, as outlined in CP22/6, Annex 2, paragraphs 2.20 to 2.24.

Calculating, allocating and collecting fees

3.5 The new steps we will follow to calculate fees are as follows:

1. Calculate provisional invoices for the fee year using the existing formula.
2. Exclude PSPs with provisional invoice values below the threshold we have decided on (£100 for 2023/24).
3. Recalculate fees using the existing formula for the remaining fee payers only.

3.6 We have given examples to illustrate how this change would affect excluded and remaining fee payers:

3.7 **Example 1:** At step 1 we calculate that PSP A owes fees of £47 for the year 2023/24. As the provisional invoice value is below £100, we exclude it from the second fees calculation. PSP A's fee is waived for the year 2023/24.

3.8 **Example 2:** At step 1 we calculate that PSP B owes fees of £2,000 for the year 2023/24. As the provisional invoice is £100 or more, we include it in the second fees calculation. The outcome from the second fees calculation is that PSP B's share of the fees for the year 2023/24 rises by £11 to £2,011 and we issue it an invoice for this amount.

Proposal 2: A mechanism to charge special project fees

Our decision

3.9 We have decided to proceed with a special project fee (SPF) mechanism with a more limited scope than we originally proposed in CP22/6. This decision on Proposal 2 is an interim step taken after careful consideration of the responses we received to CP22/6.

3.10 Each for-profit PSO within the scope of the special project fee will be responsible for paying the costs associated with the work directly relevant to them, which our staff will record in the usual way.

3.11 In light of the revised scope of the proposal, special projects will be defined as 'one-off, significant activities related to the designation of one or more for-profit PSOs under FSBRA, including work that arises as a consequence of designation where we are otherwise unable to charge its PSPs directly'. Fnality is an example of where these sorts of fees may currently apply.

3.12 Such activities include those we are already carrying out (although we will not charge for work completed by the start of the 2023/24 fee year).

3.13 Where an activity within the scope of the definition of paragraph 3.11 has been identified, the decision on whether or not to charge a SPF will be made by the PSR on a case-by-case basis. The value of the SPF will be calculated based on the number of hours we needed to carry out the work. We also reserve the right to recover third-party costs.

3.14 PSOs that we invoice for SPFs will not need to make early payment of on-account fees (equivalent to 50% of the prior year's fee) for the amount paid in special project fees during the previous year. For the avoidance of doubt, any PSO that also acts as a PSP would still be liable for on-account fees for any amount charged via the AFR in the previous year.

3.15 These amendments recognise that respondents to CP22/6 raised concerns about how special project fees would be assigned, scoped and costed under a broader mechanism.

3.16 This change to our fees policy will take effect in 2023/24.

Payers

3.17 This change will apply to work the PSR is to undertake or is already undertaking (the Project) in relation to or consequential upon the designation of a new regulated payment system under the Payment Services Regulations.

Calculating, allocating and collecting fees

3.18 The new steps we will follow when charging a special project fee are as follows:

1. Identify a special project that meets the definition in paragraph 3.11.
2. Estimate the expenditure required in the coming fee year, based on our staff's time and the best available information for third-party costs.
3. Invoice relevant PSOs during our July to September invoicing window. PSOs will have 30 days from receiving their invoice to pay their fees.
4. Where the actual cost of the special project is lower than the amount we have charged, the difference (or a proportional share of the difference) will, in the following year:
    a. be deducted from the special project fee invoiced to the relevant PSOs
    b. be refunded to the relevant PSOs if the project has come to an end.

Next steps

3.19 These changes will take effect in the 2023/24 fee year under the FEES 9 amended legal text published in Annex 1.

3.20 In due course, we expect to conduct a wider review of our fees structure, during which we may revisit the possibility of a broader special project fee mechanism, given some for-profit PSOs do not contribute to the PSR's fees. We will also consider any changes to our regulatory powers or remit and any market changes which may have a material impact on our AFR or the way in which we charge fees.

Annex 1
Fees instrument making amendments to the PSR fees rules

FCA 2023/xx

FEES (PAYMENT SYSTEMS REGULATOR) INSTRUMENT (No x) 202x

(a) Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions:

(1) paragraph 9 (Funding) of Schedule 4 (The Payment Systems Regulator) of the Financial Services (Banking Reform) Act 2013 ("FSBRA");

(2) in and under Regulation 15 of The Payment Card Interchange Fee Regulations 2015 (SI 2015/1911);

(3) in and under Regulation 136 of the Payment Services Regulations 2017 (SI 2017/752); and

(4) in the Financial Services and Markets Act 2000 ("the Act"):

(a) section 137T (General supplementary powers);
(b) section 139A (Power of the FCA to give guidance); and
(c) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).

The rule-making powers listed above are specified for the purpose of paragraph 9 of schedule 4 to FSBRA and section 138G (Rule-making instruments) of the Act.

(b) Commencement

This instrument comes into force on DAY MONTH YEAR.

(c) Amendments to the Handbook

The Fees manual (FEES) is amended in accordance with Annex A to this instrument.

(d) Citation

This instrument may be cited as the Fees (Payment Systems Regulator) Instrument (No x) 2023.

By order of the Board
DAY MONTH YEAR

Annex A

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

9 Payment Systems Regulator funding

9.1 Application and purpose

Application

9.1.1 R This chapter applies to:

(1) *operators* of *regulated payment systems*;

(2) *operators* of *IFR card payment systems*; and

(2A) *operators* of *payment systems* under the *Payment Services Regulations*; and

(3) *direct payment service providers*.

Purpose

9.1.2 G This chapter sets out how the fees payable by *PSR fee payers* and other *participants* will be calculated, to establish and fund the *PSR*.

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9.3 PSR Special Project Fee

9.3.1 R The PSR Special Project Fee (the PSPF) is only payable by *operators* of *regulated payment systems, operators* of *IFR card payment systems, and operators* of *payment systems* under the *Payment Services Regulation*.

9.3.2 G The purpose of this section is to enable the *PSR* to undertake and fund specific, time-limited projects which relate to one or more *persons* falling within FEES 9.3.1R in such a way as to promote the interests of *payment service users* as a whole.

9.3.3 R The PSPF becomes payable by a *person* falling within FEES 9.3.1R if:

(1) The *PSR* is to undertake or is already undertaking work (the Project) in relation to or consequential upon the designation of a new *regulated payment system*, new *IFR card payment system*, or new *payment system* under the *Payment Services Regulations.*

(2) The *PSR* determines that:

(a) the costs for the Project should be met by means of the PSPF, on the basis of an assessment which includes (but is not limited to) the compatibility of the levying of a PSPF in relation to that Project with the regulatory principles applicable to the *PSR* under section 53 of *FSBRA*, and the degree of support which the levying of a PSPF would offer to the *PSR* in discharging its statutory duties; and

(b) It is appropriate to charge a PSPF for the Project to an *operator* of the new *regulated payment system*, new *IFR card payment system,* or new *payment system* under the *Payment Services Regulations*.

9.3.4 R (1) For each year in which a Project in connection with which the PSPF is payable is anticipated to be undertaken, the PSPF to be charged is calculated by estimating the total expenditure on the Project during that year, comprising the *PSR's* internal costs and any fees and disbursements the *PSR* reasonably assesses it will be invoiced.

(2) Where more than one *person* is to be charged a PSPF in relation to that Project, the determination undertaken by the *PSR* pursuant to FEES 9.3.3R(2) will include an assessment of the appropriate allocation of the PSPF between those *persons*.

9.3.5 G Where a *person* is charged a PSPF in a given year, the PSPF is payable in addition to, and not instead of or as part of, any *PSR fee* which is payable by that *person*.

9.3.6 R A *person* who is liable to pay a PSPF must pay it in full to the *FCA*:

(1) by 1 September of the *fee year* in which the PSPF is invoiced; or

(2) if later, within 30 *days* of the date of the invoice.

9.3.7 G A *person* who is liable to pay a PSPF should pay it to the *FCA* by direct debit, electronic credit transfer, cheque, Maestro, Visa Debit or by credit card (*Visa*/*MasterCard* only); or by any other method of payment which the FCA permits from time to time.

9.3.8 R If a *person* who is liable to pay a PSPF does not pay it in full before the end of the date on which it is due, that *person* must pay to the *FCA*:

(1) an administrative fee of £250; plus

(2) interest on any unpaid part of the fee at an annual rate of 5% above the Official Bank Rate from time to time in force, accruing daily from the date on which the amount concerned became due.

9.3.9 G (1) The *FCA* may recover a PSPF as a debt owed to it under paragraph 23(8) of Schedule 1ZA of the Act.

(2) The *FCA* will consider taking action for the recovery (including interest) through the civil courts.

(3) In addition, the *FCA* or *PSR* may be entitled to take regulatory action in relation to the non-payment of a PSPF. What action, if any, that is taken by the *FCA* or *PSR* will be decided upon given the particular circumstances of the case.

9.3.10 R Where the actual cost of the regulatory work undertaken by the *PSR* on a Project referred to in FEES 9.3.3R which is the subject of a PSPF differs in a given year from the total PSPF charged to one or more *persons* in relation to that Project for that year:

(1) Where the actual cost exceeds the total PSPF charged in respect of that Project in that year, the additional cost (or, if more than one *person* was charged the PSPF in relation to that Project, a share of the additional cost proportionate to the share of the PSPF for that Project allocated pursuant to FEES 9.3.4R(2) to that *person*) will, in the following year:

(a) Be added to the PSPF to be invoiced to the *person* or *persons*; or

(b) If the Project has come to an end, be invoiced as a PSPF to the *person* or *persons*.

(2) Where the actual cost is lower than the total PSPF charged in respect of that Project in that year, the difference (or, if more than one *person* was charged the PSPF in relation to that Project, a share of the difference proportionate to the share of the PSPF for that Project allocated pursuant to FEES 9.3.4R(2) to that *person*) will, in the following year:

(a) Be deducted from the PSPF invoiced to the *person* or *persons*; or

(b) If the Project has come to an end, be refunded to the *person* or *persons*.

PUB REF: PS23/2

12 Endeavour Square
London E20 1JN
Telephone: 0300 456 3677
Website: www.psr.org.uk