

Consultation feedback

APP scams:  
Question by question  
responses to 2023  
reimbursement  
requirements  
consultations

Summary of views

December 2023

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# 1 Summary of feedback to Consultation Paper 23/4

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## CP 23/4: Faster Payments APP scams reimbursement rules and operator monitoring

In July 2023 we published our [consultation](#) on two of our draft directions, which are the legal means to put our new APP fraud reimbursement requirements in place. This marked the start of our plans to implement new requirements that will see mandatory reimbursement for victims of APP fraud.

- The first requirement looks at the rule changes needed to be applied within Faster Payments.
  - The second requirement focuses on making sure Pay.UK, the operator of Faster Payments, has an effective monitoring regime that will measure whether payment firms are consistently complying with the reimbursement requirements.
  - The PSR also published the draft details of the general direction that will see all payment firms reimbursing victims of APP fraud. This third direction was consulted on separately in September 2023 (CP23/10).
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**Question 1: Does our proposed package of the three legal instruments outlined above (and published in the annexes to this document) give full effect to the policy set out in our policy statement PS23/3? If not, why, and what changes are necessary in order for it to do so?**

- 1.1** Most respondents agreed that the package of legal instruments broadly gave effect to the policy, but most (including PSPs, industry representatives and consumer groups) made suggestions on particular areas of the instruments. Most of the suggestions concerned changes to definitions of terms used across all three instruments, such as APP scam, APP scam payment and vulnerable customer. We have since made changes to these definitions to provide further clarity. Several PSPs also provided us with suggestions on 'stop the clock'.
- 1.2** One industry representative did not think we had provided clarity on Pay.UK's exact responsibilities, or what Pay.UK's plans would cover. Some PSPs said it was hard to comment on the legal instruments without seeing a full operational structure or without seeing the draft Faster Payments rules. We explained our approach to Pay.UK and its role in our June policy statement.

**Question 2: Do you agree with our proposed timeline for implementation and the feasibility of the 'go live' date of 2 April 2024? If not, why, and what alternative would you propose?**

- 1.3** Nearly all industry respondents disagreed with our proposed implementation date of 2 April 2024. Most highlighted key issues such as a lack of system capability and operational timescales. PSPs and industry representatives also highlighted that Pay.UK had not yet produced draft Faster Payments rules, and elements of the policy had not yet been finalised. Most responses centred on the lack of system capability and the need for one reimbursement management solution.
- 1.4** There was some support for the proposed date from consumer groups, but this was often caveated with the need for industry to be operationally ready.
- 1.5** We considered the feedback to our proposed date and consulted on a new proposed date of 7 October 2024 in September.

**Question 3: Do you have any comments on the frequency of reporting to Pay.UK? Would a different reporting frequency strike a balance between the cost and burden of reporting and sufficient data coverage?**

- 1.6** There were mixed views. Some PSPs and industry representatives suggested bi-annual reporting, while others suggested monthly or quarterly reporting would be most appropriate. Several respondents suggested annual reporting. Most respondents suggested that daily or twice daily reporting would be disproportionate and would not allow for them to amend the data as they assessed whether APP scams reports were found to be in scope of the policy or not.
- 1.7** Some industry representatives and consumer groups pointed out the cost and burden of more frequent reporting and suggested we should give guidance outlining best practice to support this.
- 1.8** We are still considering this feedback and will be providing more information next year regarding the data to be provided and the frequency of this reporting.

**Question 4: Do you have any comments on what data Pay.UK should gather?**

- 1.9** Most agreed with the data items we proposed Pay.UK should gather, but many also made further suggestions for data items.
- 1.10** One PSP suggested that PSPs should only report APP scams in scope of the reimbursement requirements and others said that the data collected should not include data on CHAPS or international payments.
- 1.11** One industry representative suggested that Pay.UK should gather data on instances where the receiving PSP failed to respond in a timely manner or did not reimburse the sending PSP. Other PSPs' suggestions included capturing when receiving PSPs did not respond to information requests, along with instances where the receiving PSP failed to reimburse the sending PSP.
- 1.12** One PSP suggested that some clarity was needed on the reimbursement rate and the time taken to reimburse. Other PSPs suggested that reporting should include data on the type of scam, number of APP scams reported (split between sending PSP and receiving PSP) and information on whether a claimant had been the victim of fraud before. Another respondent

suggested that reporting should include the total number of claims reimbursed and the total value of scam claims per month and year. It was also suggested there should be a defined list of reasons for recording why a PSP exceeded the five-day reimbursement requirement.

- 1.13** One industry representative highlighted that smaller PSPs might not have the system capability to capture some data (such as 'stop the clock' timings).
- 1.14** One industry representative said that receiving PSPs should not have to report things that the sending PSP could confirm such as date and time of the reimbursement. Other respondents said that the initial data requirements need further explanation and that our current proposals to share data on how many claims were rejected and use of exceptions might cause duplication. They also pointed out that the data requirements seem to be based on case volume without any focus on value. One respondent suggested that any additional data points collected should be reasonable and proportionate. They also pointed out that there is no restriction in the direction about how Pay.UK use this data.
- 1.15** We are still considering this feedback and will be providing more information next year regarding the data we expect industry to provide to Pay.UK and the frequency of this reporting.

**Question 5: Do you have any comments on the approach and principles for Pay.UK monitoring compliance?**

- 1.16** Almost all agreed with the general approach and principles, but many had comments or suggestions.
- 1.17** Most respondents asked for more detail on the approach Pay.UK would take to monitoring and compliance. Some PSPs said that they needed more detail about compliance and enforcement to comment on the proposals. Two respondents wanted a template for data reporting.
- 1.18** Several respondents raised concerns about Pay.UK's ability to monitor compliance and highlighted that its enforcement powers are limited. Others questioned how direct and indirect participants would be treated.
- 1.19** One PSP said it was inappropriate for a non-regulatory body to monitor compliance. Another felt it was inappropriate for a scheme operator to enforce the reimbursement requirement. We explained our reasoning and thinking behind our role for Pay.UK in our June policy statement.<sup>1</sup>
- 1.20** One industry representative asked for more clarity on the enforcement structure. One PSP asked for data to be shared with them to help them keep up to date with market trends and new scams.
- 1.21** We are still considering this feedback and will be providing more information next year on the compliance and monitoring proposals.

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1 [PS23/2 Fighting authorised push payment fraud: a new reimbursement requirement \(psr.org.uk\)](https://www.psr.org.uk/ps23/2-fighting-authorized-push-payment-fraud-a-new-reimbursement-requirement)

### **Question 6: Do you have any other comments on the section 55 specific requirement on Pay.UK?**

- 1.22** Most respondents agreed with our proposal to give a specific requirement to Pay.UK. Several respondents had suggestions and comments in relation to the 'stop the clock' provision.
- 1.23** One PSP suggested 'stop the clock' should be expanded to include situations where a PSP needs to ask for more information to determine if an APP scam has taken place. Another asked for more clarity on how we expect PSPs to communicate with customers and how quickly a sending PSP should make the receiving PSP aware of the fraud. We have reworked the 'stop the clock' provision on the basis of feedback received.
- 1.24** Some respondents commented on the definition of vulnerability. We have updated the definition of vulnerability to help provide clarity. Respondents also asked for a definition of a civil dispute and a definition of first-party fraud. We have not provided a definition of civil dispute or first party fraud as this term does not appear in the legal instruments. As we explained in our June policy statement, civil disputes do not fall under the scope of the policy.<sup>2</sup>
- 1.25** One PSP asked for clarity on how Pay.UK will draft and manage the Faster Payments rules going forward. Another industry representative added that they wanted clarity on how Pay.UK would manage any changes to scheme rules.

### **Question 7: Do you have any other comments on the section 54 specific direction on Pay.UK?**

- 1.26** Most respondents commented and asked for further clarity on the compliance process. Many also requested further clarity on how Pay.UK and the PSR would incentivise firms to prevent fraud.
- 1.27** While some respondents agreed that Pay.UK is best placed to create and implement a compliance monitoring regime, they had concerns about whether or not this could be implemented by the suggested start date of 2 April 2024.
- 1.28** Furthermore, some respondents suggested that it should not be the responsibility of direct participants to liaise with their indirect participants on behalf of Pay.UK. Respondents also thought it was important for Pay.UK to have a mechanism in place to interact with all PSPs directly.
- 1.29** One industry representative said the direction should place an ongoing obligation on Pay.UK to define the future governance around compliance.
- 1.30** We will consider this feedback and provide further information on the compliance and monitoring proposals next year.

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2 <https://www.psr.org.uk/media/iolpbw0u/ps23-3-app-fraud-reimbursement-policy-statement-final-june-2023.pdf>

**Question 8: Do you have any other comments on the section 54 general direction on PSPs?**

- 1.31** Nearly all respondents asked for clarity on the scope of the general direction and which participants it would cover. Some respondents queried definitions such as ‘account not controlled by consumer’ and suggested that a definition of ‘payment account’ was needed. We have addressed the need for clarity on which PSPs are captured by issuing a specific direction instead of a general direction, and provided further definitions.
- 1.32** Most respondents felt it was our job, rather than that of direct participants, to ensure all the indirect access PSPs were aware of their obligations under the reimbursement requirement. We considered the feedback and made changes to this, which we consulted on alongside the specific direction in September.
- 1.33** One PSP asked whether indirect access providers would be liable for transactions enabled by their indirect PSP customers. Other respondents said that there should be a service level agreement for receiving PSPs to provide information to the sending PSP. We took on board this feedback and have made amendments to the direction.

**Question 9: Do you agree that it is right to follow a similar approach to imposing a reimbursement requirement within the CHAPS payment system?**

- 1.34** While most respondents agreed a similar approach to the reimbursement requirement for CHAPS would be right, some raised concerns.
- 1.35** Some pointed out that the rate of fraud in CHAPS is lower than in Faster Payments. Two respondents said a reimbursement requirement for CHAPS might lead some PSPs to stop offering CHAPS payments, which would reduce competition and choice. Some respondents also highlighted that there are different fraud risks in the CHAPS system, while one respondent suggested that the fraud rate in CHAPS might decline when the transaction limit for Faster Payments increases.
- 1.36** We will consider all the feedback and provide further information on the proposed next steps for CHAPS in 2024.

**Question 10: Do you have any comments on the most effective way to do this?**

- 1.37** Some respondents suggested that a similar approach to the reimbursement requirement for Faster Payments could work for the CHAPS system. They also said that the same data solution should work for both Faster Payments and CHAPS.
- 1.38** Two respondents suggested that the Bank of England, as the payment service operator for CHAPS, should manage compliance monitoring. Another response highlighted the need for effective communication between the Bank and PSPs. Some respondents suggested that as CHAPS payments are generally higher value transactions, any reimbursement requirement should be tailored to CHAPS’ specific needs.
- 1.39** One PSP said that consideration should be given to CHAPS payments that are destined overseas.
- 1.40** We will consider all the feedback and provide further information regarding the proposed next steps for CHAPS in 2024.

**Question 11: Do you have any other comments on this consultation?**

- 1.41** Many respondents replied with comments regarding the policy statement issued in June.
- 1.42** Some respondents asked for clarity on the scope of the requirement. Another respondent said that the PSR should require Pay.UK to publish its compliance monitoring regime. As noted above we expect to provide further clarity on the compliance monitoring regime next year.



## 2 Summary of feedback to Consultation Paper 23/6

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### CP 23/6: APP fraud: Excess and maximum reimbursement level for Faster Payments and CHAPS

In August 2023 we published our [consultation](#) on the value of the excess and maximum reimbursement level for Faster Payments. The document explained the options we proposed for the excess and maximum level of reimbursement and the application of the latter to vulnerable customers.

We also asked questions on the topic of a maximum reimbursement level for CHAPS on behalf of the Bank of England. Answers to these questions were sent to the Bank to analyse and were not analysed by the PSR.

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### Excess

#### Application of the policy

**Question 1: Do you agree that PSPs should be free to apply a partial excess, as well as not levy an excess at all, should they want to?**

- 2.1** We received 36 responses to this question. The majority of respondents disagreed with allowing PSPs to apply a lower excess. Reasons were split between respondents making the case for no excess applying at all, and those who argued that it should be fixed and mandatory.
- 2.2** The primary argument for a mandatory, fixed excess was that it would provide greater consistency for consumers and ensure that victims are treated equally across different PSPs. However, many PSPs said that although they wanted the excess to be mandatory, they would support having the freedom to waive it for specific cases. Meanwhile, consumer groups and some PSPs were against any excess, arguing that it would not achieve its aims and would only serve to cause harm to victims.
- 2.3** Some PSPs did argue for being allowed to apply a lower excess or no excess, at their own discretion. They pointed out that a mandatory excess would result in some customers receiving less protection than they currently have. This is particularly true for PSPs that are signed up to the CRM code. Some victims would receive less of their money back, which is against the aims of our policy.
- 2.4** We have decided to allow PSPs to apply an excess below the £100 limit, including a zero excess, as we consider firms should be allowed to go beyond the level of protections in our policy.

## Question 2: Are these factors the correct ones when considering the excess?

**2.5** The factors we listed in the consultation were as follows:

- incentivising customer caution and influencing customer decision-making
- the level of operational demand for PSPs (either in applying an excess or in excluding low-value claims)
- ease of understanding for consumers
- minimising financial loss for consumers

**2.6** We received 32 responses to this question. The majority of respondents agreed that the factors we listed in the consultation were correct.

**2.7** There was strong consensus around the factor 'ease of understanding for consumers', with some stakeholders, both from industry and also consumer groups, noting that this factor is potentially the most important. If consumers do not find the excess easy to understand, then any positive impact on customer caution and moral hazard will be nullified.

**2.8** While generally considering that we had identified the important issues correctly, stakeholders did suggest a few changes. One thought that 'minimising harm for consumers' was a better approach than 'minimising financial loss for consumers' as an excess could have negative impacts on a consumer that go beyond the financial.

**2.9** A few PSPs and consumer groups recommended that 'operational demand' for PSPs should either be removed entirely as a consideration or should be classed as a secondary factor. These respondents felt that operational demand was not important as PSPs would be able to properly resource the reimbursement policy. They suggested we also consider the potential friction on consumer payment journeys.

**2.10** We considered these 5 factors as our primary factors when deciding on the most appropriate level to set the excess.

## Question 3: Is there anything else we should consider when setting the level for the excess?

**2.11** We received 24 responses to this question with a number of suggestions for different factors that we should also consider. These included:

- increasing consumers' fraud risk awareness
- the impact on competition
- whether a customer is acting in a personal capacity or as a business
- incentivising caution for both small and large payments

**2.12** We considered these factors along with our 5 primary factors when deciding on the most appropriate level to set the excess.

**Question 4: We are seeking views on whether the excess should be a fixed amount or a percentage of the fraud value. Should the excess be a fixed value, a percentage or a percentage with a cap? If fixed, what value should it be and why? If a percentage, what amount and why? If a percentage with a cap, what amount and what should the cap be?**

- 2.13** We received 35 responses to this question with a large variety of views expressed.
- 2.14** Some PSPs and one consumer group argued for a percentage excess, or a combination of both a fixed and percentage excess to address the potential risk of moral hazard for higher value scams. Other respondents countered that the complexity of excess calculated this way would be difficult to explain to consumers and would therefore be less effective in encouraging customer caution. There was also a view that the percentage option could compromise PSPs meeting their obligations under the newly established FCA Consumer Duty.
- 2.15** Some PSPs and industry groups made the case for a fixed excess, suggesting values from £5 to £250. The primary argument for a fixed excess was that this would be the easiest option for PSPs to communicate and for consumers to understand. Some stakeholders recognised that this would result in less of an incentive for customer caution when making larger payments, but felt that consumer ease of understanding was a more important concern.
- 2.16** Some stakeholders advocated for a 'nominal excess', suggesting figures of £5 or £40. Others preferred a £250 excess, which would result in over 50% of claims receiving no reimbursement.
- 2.17** After considering the responses, we have made the decision that we will allow sending PSPs to levy an excess up to a maximum of £100 per claim.

**Question 5: Do you have any data, evidence or views to suggest how an excess should be calibrated?**

- 2.18** We received 19 responses to this question. A number of respondents pointed to UK Finance data so there was some repetition of data provided. The data provided includes illustrations of the impacts an excess would have on consumers, and data on how many frauds were above or below different excess amounts proposed.
- 2.19** We used the data provided to help inform our decision making on the most appropriate level for the excess.

**Question 6: Should the excess remain static? Increase with inflation? Some other metrics? Not increase at all?**

- 2.20** We received 31 responses to this question. There was a unanimous consensus that the excess should not change automatically via inflation or any other metric.
- 2.21** The excess will not change automatically and any future changes to the excess will be subject to PSR review.

## Maximum level of reimbursement

### Parameters of the policy

#### **Question 7: Do you agree that the maximum reimbursement level should be applied to all consumers, including those who might be classed as vulnerable?**

- 2.22** We received 31 responses to this question. The vast majority of respondents were in favour of applying the maximum limit to vulnerable customers.
- 2.23** In particular, PSPs believed that applying the requirement to all customers would ensure consistency. Many respondents pointed out the need for clarity, in part to make it easy for consumers to understand. Some also suggested that this approach would reduce complexity and costs, and place less of a burden on the Financial Ombudsman Service. One respondent added that protections for vulnerable customers are present elsewhere in the reimbursement policy, such as the claim excess and the customer standard of caution.
- 2.24** Respondents spoke of the prudential need to apply a maximum limit consistently. They added that this would be crucial to solvability and system stability, and in limiting financial risk. One PSP suggested that if vulnerable customers were exempted, fraudsters would simply target this group even more than they currently do. Another PSP echoed this, saying that the proposals would protect PSPs from potential bad actors who might seek to claim vulnerability for high value scams.
- 2.25** Despite this, many respondents were dissatisfied with our use of the FCA's definition of vulnerability. Some described it as inconsistent with the CRM Code's definition, as it creates a broader set of principles based on the general characteristics of a victim, rather than focusing on how those characteristics relate to the APP scam itself. In contrast, the Code emphasises evaluating vulnerability on a case-by-case basis. Respondents suggested that using the FCA's definition would compel them to reimburse more consumers than necessary. One industry group argued that evidence of a vulnerable situation may not necessarily explain a consumer falling victim to an APP scam.
- 2.26** A small number of respondents disagreed that any maximum limit should apply to vulnerable customers. Some consumer groups argued that this approach could be seen as punishing a victim for their vulnerability. They were in favour of exempting vulnerable customers, to provide greater financial protection.
- 2.27** Another PSP argued that the maximum limit should not be applicable where a victim does not have the decision-making capabilities to understand the risk involved in making the payment. Another PSP suggested that banks should be free to increase the cap in the event of vulnerability.
- 2.28** We have decided to apply the maximum level of reimbursement to all claims, including those from vulnerable customers.

## Factors to consider when setting the maximum reimbursement level

### Question 8: Are these factors the correct ones when considering the maximum reimbursement level?

### Question 9: Are there any other factors we should consider?

- 2.29** We received 25 responses to these questions. Most respondents agreed with some or all of the factors we had presented. Where PSPs were in full agreement, they pointed out that these factors should be considered against both the key policy outcomes and the impact of other elements of the overall policy package.
- 2.30** Respondents particularly agreed with two factors, ‘the level of PSP liability’, and the ‘appropriate coverage of all fraud types to incentivise PSP anti-fraud measures’, although one respondent questioned the applicability of the latter should the proposed maximum cap be implemented. One respondent added that they supported a clear and easy to understand maximum reimbursement level that supports consumer messaging and education regarding common APP scams.
- 2.31** One PSP asserted that while the factors were relevant, we had not given them sufficient consideration when proposing the limit. A number of respondents felt that the proposed maximum limit did not reflect these factors adequately.
- 2.32** Some respondents suggested other factors for consideration. These included:
- PSP solvability and payment system stability implications
  - minimising friction to payment journeys
  - beneficiary bank liability, and its explicit explanation to avoid confusion
  - the impact on competition
  - level of controls on consumers and payment journeys
  - the proportionality of maximum reimbursement levels to average values of APP fraud
  - the impact on GDP
  - ensuring consistent reimbursement outcomes for victims
  - reducing and preventing scams through consumer caution
  - the impact of high-value scams on the victim
- 2.33** We have considered the additional factors provided, which will also help to inform our evaluation of the policy.

## The option we are presenting for Faster Payments

### **Question 10: Do you gather any data that would show what type of cases are likely to fall outside the maximum reimbursement level?**

**2.34** A small number of respondents provided data additional to that which we had presented in the consultation paper. This included data on the instances, and types, of fraud above our proposed maximum limit.

### **Question 11: Should the maximum reimbursement level align with the Financial Ombudsman Service going forward? Increase by inflation? Some other metrics? Not increase at all?**

**2.35** 36 respondents expressed a view on the maximum reimbursement level. The majority of respondents were not in favour of alignment with the Ombudsman, though these were split between those who wanted a lower maximum level and those who wanted no maximum at all.

**2.36** Several of the respondents who were in favour of alignment to the Ombudsman limit were PSPs. One respondent asserted that this would bring simplicity and potentially reduce the number of cases referred to the Ombudsman. An industry group reflected views from its members who supported the Ombudsman maximum award limit. These PSPs argued that where a decision is not made to reimburse in full by the sending firm, almost every case between a lower maximum limit, for example £85,000, and £415,000 will be appealed to the Ombudsman. Not only would this lead to additional emotional distress and delay for consumers, but it would also be costly for sending PSPs, who would face extra operational costs, 8% interest, and a £750 Ombudsman service administration fee per case.

**2.37** Another PSP added that alignment with the Ombudsman would represent significant protections for consumers, but added that we should consult again on the limit if in practice continued alignment disincentivised consumers from exercising caution. A further PSP called for PSPs to be allowed to exceed the maximum if they wanted to, adding that while Ombudsman limits are influenced by more factors than mandatory reimbursement, it was reasonable from a consumer standpoint for PSPs to have the option.

**2.38** A consumer organisation described the Ombudsman limit as a well-understood benchmark, that is sufficiently high to cover most fraud cases. Aligning with this limit would ensure consistency, predictability, and ease of understanding for consumers.

**2.39** Several consumer organisations were against any maximum limit. These organisations felt that all payments, whether high or low in value, should be protected. Another respondent said that introducing limits to reimbursement would create moral hazard for PSPs because there would be little incentive to apply proportionate fraud prevention measures for high-value transactions.

**2.40** One respondent argued that due to the extremely small volume of cases (0.02% according to UK Finance data in CP23/6) above £415,000, a maximum reimbursement level is unnecessary. A further consumer organisation disagreed with the rationale of protecting PSPs from potentially unlimited financial risk, saying that it is wrong to protect PSPs from unlimited liability while individual customers are not.

- 2.41** Most respondents who saw the proposed maximum limit as too high were PSPs, particularly e-money institutions. Some industry bodies supported these views. Smaller PSPs favoured a limit of £30,000, aligned to the Consumer Credit Act 1974. These PSPs mentioned the issue of stability and prudential risk, and argued that most of their fraud took place below this limit. They warned of market exits and insolvency should they be exposed to unlimited or very high liability. An industry group argued that the proposals would make PSPs an ‘insurer of last resort’.
- 2.42** Larger PSPs called for alignment to the Financial Services Compensation Scheme (FSCS) limit of £85,000. They argued that customers would not be incentivised to take greater caution at the Ombudsman limit, and that the FSCS limit was well-known. Respondents added that consumer behaviour, including when to spread investments between different institutions, would be affected and create higher risk for investors who might misunderstand the protections provided by FSCS.
- 2.43** A number of respondents argued that the Ombudsman’s limit exists for reasons beyond fraud reimbursement, such as compensating consumers and issuing penalties in cases where PSPs have been negligent. These respondents felt that our proposals were essentially an insurance policy, with different policy intentions from those of a dispute resolution body. These PSPs said that if we did align the limit with that of the Ombudsman, it should not automatically increase in line with it. Changes to the Ombudsman limit respond to conditions across the financial services industry as a whole, and might not necessarily reflect the current state of the fraud landscape based on underlying data.
- 2.44** We have considered the feedback provided and have decided to set the maximum level of reimbursement at £415,000. We have provided more detail as to why we reached this decision, and on the steps firms can take to manage any risks, in Chapter 7 of the policy statement.

**Question 12: What factors should we consider as part of the review of a maximum reimbursement level?**

- 2.45** Respondents presented a number of factors for the PSR to consider as part of any review of the maximum level. These included:
- the impact on levels of APP fraud
  - the number and value of actual APP fraud reimbursement claims at the maximum level, and the types of scams involved
  - the impact on payment sector stability and the number of PSP market exits
  - changes to risk appetite for processing larger transactions
  - the ability to cover the majority of cases
  - the impact on consumer caution in high-value cases
  - the value of other comparable financial services protection limits at the time of the review
  - a PSP’s payment policies (for example, a PSP’s maximum single payment value, maximum daily payment value, and maximum monthly payment value)
  - any cases from the Ombudsman where an overturn award was higher than our maximum reimbursement level



# 3 Summary of feedback to Consultation Paper 23/7

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## CP 23/7 Authorised push payment scams: The consumer standard of caution

In August 2023 we published our [consultation](#) on the consumer standard of caution (gross negligence) and the consumer standard of caution guidance for PSPs. The document explained the policy approach we proposed to take to the consumer standard of caution and draft guidance we intended to produce alongside it.

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### **Question 1: Do you agree that the PSR should specify the standard of care that PSPs can reasonably expect of consumers? Please provide reasons for your answer.**

- 3.1** An overwhelming majority of respondents agreed with this proposal.
- 3.2** Most PSP respondents, and their representative bodies, added the caveat that they did not agree with our overall approach to the concept of 'gross negligence', and used their answer to this question to offer general criticism of our wider policy approach.
- 3.3** One respondent objected to the proposal in Question 1, arguing that the very concept of a standard to which a consumer should be held would result in a culture of victim-blaming.
- 3.4** We have decided to continue with our approach of specifying the standard of care that PSPs can reasonably expect of consumers.

### **Question 2: Do you agree that the standards of care specified by the PSR should be exhaustive, and that PSPs should not be able to introduce additional standards through their contractual relations with consumers? Please provide reasons for your answer.**

- 3.5** There was almost unanimous agreement with this proposal. One respondent argued that a PSP should retain discretion as to what the standard of care should consist of. Several respondents, whilst agreeing with the premise of the question, argued that the standards of care should be periodically reviewed to ensure they remain relevant and responsive.
- 3.6** We have decided to continue with our approach that the standards of care we specify should be exhaustive, and that PSPs should not be able to introduce additional standards through their contractual relations with consumers.

### **Question 3: Do you agree that the burden of proof should fall on the PSP to demonstrate that a consumer – through gross negligence – has failed to meet one or more of the standards at paragraph 3.2? Please provide reasons for your answer.**

- 3.7** The majority of respondents agreed with this proposal. However, many expressed caveats and concerns.



**3.8** Several respondents argued that, whilst they agreed with the proposal, they felt that there should be a strict requirement for consumers to provide full disclosure in response to information requests made by their PSP. These respondents argued that anything short of a strict disclosure obligation being placed on the consumer would make it difficult for a PSP to discharge the burden of proof needed to demonstrate that a consumer had been grossly negligent.

**3.9** The small number of respondents who disagreed with the proposal did so as they felt the concept of 'gross negligence' was too difficult a burden for a PSP to discharge. Conversely, one respondent argued the opposite – that the cumulative effect of our policy proposals would be to make it *too* easy for PSPs to discharge a burden of proof that a consumer had, through gross negligence, failed to meet one more of the standards of care we have proposed.

**3.10** We have decided to continue with our approach of requiring the PSP to demonstrate when a consumer has, through gross negligence, failed to meet one of the standards of care we specify.

**Question 4: Do you agree that PSPs should not be able to introduce, through their contractual relations with consumers, terms or conditions that shift the burden of proof onto consumers, or seek to reduce the burden on providers? Please provide reasons for your answer.**

**3.11** There was near unanimous agreement with this proposal, with very few contextual comments or caveats. One respondent, whilst agreeing with the proposal, asked that it be made more explicit that a PSP can incorporate the standard of care into their contractual terms and conditions with a consumer.

**3.12** We have decided to continue with our approach that PSPs cannot, through their contractual relations with consumers, require consumers to disprove that they were grossly negligent.

**Questions 5 and 6: Do you agree that consumers should be expected to have regard to tailored, specific warnings raised by their PSP before a proposed authorised push payment has been executed, where those warnings make clear that the intended recipient of the payment is likely to be a fraudster? Please provide reasons for your answer. Do you have any other comments on the requirement to have regard to warnings, taking into account the draft policy document at Annex 1 and the draft guidance at Annex 2?**

**3.13** Most respondents disagreed with this proposal. One respondent argued that there should not be any obligation at all for a consumer to have regard to warnings, on the grounds that warnings are not proven to be effective. The same respondent argued that our proposed approach would make it too easy for a PSP to argue a consumer had, with gross negligence, failed to have regard to such warnings. Another respondent expressed concern that PSPs would design their warnings to 'trip-up' consumers, rather than meaningfully inform them of a foreseeable risk.

**3.14** One PSP respondent encouraged us to go further, and to specify that a warning could only be 'tailored' and 'specific' if it involved direct contact by an agent of the PSP issuing the warning, rather than an automated form of communication.

- 3.15** Other respondents expressed the opposite concern to those described above, that our proposal did not place a strong *enough* obligation upon consumers. Several respondents argued that consumers simply having regard to warnings, however well-tailored, was insufficient. Some argued that the consumer should be expected to *obey* these warnings.
- 3.16** Several respondents argued that any such warnings should be ‘interactive’, by which they meant that the consumer should be required to undertake certain specified actions in response to the warning being issued, to check the credentials of the prospective recipient of an authorised push payment.
- 3.17** A repeated concern raised by several respondents was that any obligation requiring a PSP to determine whether a recipient of a prospective payment is ‘likely to be a fraudster’, would create several difficulties. PSPs would find it challenging to make sufficiently robust evaluations that a prospective recipient of an APP payment was ‘likely to be a fraudster’. Such an evaluation would be speculative and would likely give rise to false positives, mistakenly designating legitimate payees as likely fraudsters. Several respondents argued that PSPs could be legally liable if their customers chose not to proceed with payment in these false positive cases. Although respondents were not always clear on the exact nature of this liability, several were concerned that a prospective payment recipient, falsely identified as a likely fraudster by a PSP, could bring defamation proceedings against the PSP concerned.
- 3.18** One final argument raised by several respondents against the phrase ‘likely to be a fraudster’ was that it may give rise to the committing of a ‘tipping off’ offence by a PSP, although the only legal evidence offered by respondents on this point seemed to suggest that this was unlikely to materialise.
- 3.19** A small number of respondents argued that the form of words we had proposed would mean that only warnings generated by a consumer’s PSP could be considered. This, they argued, would preclude a PSP from considering any warnings issued by the police, or other competent national authority, advising a consumer not to proceed with a particular payment. Respondents asked that our wording be amended to allow a PSP to take into account warnings issued by competent national authorities, such as the police.
- 3.20** We have decided to adjust the wording of this requirement to allow PSPs to make an intervention which clearly indicates the PSP’s assessment of the probability that an intended payment is an APP scam payment. The word ‘intervention’ makes clear that, in addition to the provision of direct advice to a consumer of the risks of proceeding with a payment, PSPs can be expected to pause and potentially reject a payment instruction where they are satisfied that a proposed payment is a scam. We explain this further in Chapter 5.

**Questions 7 and 8: Do you agree that consumers should be subject to a standard to promptly notify their PSP when they suspect they have, or may have, fallen victim to an APP scam? Please provide reasons for your answer. Do you have any other comments on the prompt notification requirement, taking into account the draft policy document at Annex 1 and the draft guidance at Annex 2?**

- 3.21** Almost all respondents agreed, in principle, with this proposal. Several of those who agreed nonetheless felt that this obligation on the consumer should not sit within the scope of our ‘consumer standard of caution’ policy. They felt the word ‘caution’ implied actions a consumer should take before the point at which an authorised push payment is executed.

- 3.22** Several respondents asked for greater clarity as to what would constitute prompt notification in any given case, whilst a small number argued that there is no need to distinguish between 'prompt' reporting and the 13-month period for raising a reimbursement claim outlined in our June policy statement.
- 3.23** We consider that the word 'caution' can reasonably be taken to imply 'all action taken by a consumer up until the point at which their claim for reimbursement is determined'. We are also of the view that prompt reporting will turn on the circumstances of each individual case, and that it is desirable for consumers to be expected to inform their PSPs promptly of a suspected APP scam, not least because this provides the best chance for a PSP to successfully repatriate defrauded funds. As such, we have decided to continue with our approach on prompt reporting.

**Questions 9 and 10: Do you agree that consumers should be subject to a standard to respond to reasonable and proportionate information requests from their PSP, where those requests are necessary to establish whether the consumer is the victim of an APP scam, or where they are necessary under our 'stop the clock' policy? Please provide reasons for your answer. Do you have any other comments on the information sharing requirement, taking into account the draft policy document at Annex 1 and the draft guidance at Annex 2?**

- 3.24** Most respondents agreed with this proposal, although with some significant caveats. As with the prompt notification proposal, several respondents felt that this proposal should not sit within a 'consumer standard of caution'. 'Caution', they felt, should pertain only to pre-transaction events.
- 3.25** Several PSPs argued that disclosure requirements placed upon consumers should be strict – the consumer should respond fully to any and every request made by their PSP – and that there should be a subsidiary obligation placed upon consumers not to mislead their PSP through the submission of evidence. One respondent suggested that any failure by the consumer to adequately respond to a disclosure request by their PSP should automatically nullify a reimbursement claim.
- 3.26** Several respondents asked for further guidance on what would constitute a disproportionate request for information by a PSP.
- 3.27** A common concern raised by respondents was whether this proposal would be impacted in any way were a consumer to use a claims management company (CMC) to submit reimbursement claims on their behalf. Several respondents suggested that the business model of CMCs is to forbid direct communication between the consumer and the PSP. Respondents asked for clarity on this specific issue.
- 3.28** We have decided to continue with our approach on information sharing, although we have clarified our policy in relation to consumers who rely on CMCs to submit reimbursement claims by making clear that they will be subject to the same disclosure obligations as consumers who submit claims directly.

**Questions 11 and 12: Do you have any additional feedback on the draft policy document at Annex 1 or the draft guidance at Annex 2? Do you have any additional suggestions for inclusion in the standard of care that PSPs can expect of consumers in relation to authorised push payments?**

- 3.29** Whilst some respondents did not directly answer these questions, several provided indirect answers through their responses to other questions or through generalised introductory text in their consultation responses. We have treated those sections of text as *de facto* answers to these questions, where it was possible for us to do so.
- 3.30** A significant number of respondents advanced an alternative formulation for what should constitute a ‘consumer standard of caution’. This largely stemmed from the proposals of a single respondent, with which several other responses agreed. That respondent argued, broadly, that there should be three obligations placed upon the consumer:
- a requirement to have regard to tailored, specific, and interactive warnings, before a proposed authorised push payment has been executed, where the specific advice if followed would materially impact the consumer’s ability to identify and mitigate the scam risk
  - a requirement to conduct a basic check before initiating a payment, which may be as simple as checking online reviews or calling an independently sourced number
  - a requirement to be honest in all interactions with a payment service provider where the customer’s deliberate dishonesty prevents the payment service provider from providing adequate warnings or other actions to mitigate the risk of fraud
- 3.31** A small number of respondents suggested that a consumer should be able to waive their reimbursement rights to proceed with a payment against the advice of their PSP.
- 3.32** One respondent documented their experience that PSPs often seek to impose unreasonably short timeframes for consumers to respond to information requests, and that this practice should be expressly forbidden in our policy.
- 3.33** Several respondents used their answers to these questions to reiterate their view that we should provide more comprehensive guidance on the meaning of ‘gross negligence’.
- 3.34** We agree that PSPs should not impose unreasonably short timeframes for consumers to respond to information requests, and we have introduced wording in our policy guidance to prohibit this. We have also provided further policy guidance on the types of interventions PSPs should put in place to alert consumers to an APP fraud risk.

**Question 13: Do you agree that a standard to report a suspected APP scam to the police should not be included at this stage? Please provide reasons for your answer.**

- 3.35** Answers to this question were mixed. Most respondents did not feel it should be required for consumers to report suspected APP scams to the police, although some did see the merits in the proposal and felt this would deter first-party fraud.
- 3.36** We have decided to introduce a limited standard of police reporting, in order to help mitigate the risk of first-party fraud.

## 4 Summary of feedback to Consultation Paper 23/10

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### CP23/10: Specific Direction on Faster Payments participants – implementing the reimbursement requirement

In September 2023 we published our [consultation](#) on the proposed specific direction on PSPs who participate in Faster Payments. The specific direction will underpin the Faster Payments reimbursement rules. This is one of three proposed legal instruments we will use to implement the policy. We consulted on the other two legal instruments in July 2023.

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#### **Question 1: Does the change to a specific direction provide more clarity on scope whilst still achieving the policy objectives?**

- 4.1** Many respondents welcomed the change from a general to a specific direction. However, respondents requested further clarity on the scope of the policy. They again asked us to clarify the definition of 'payment account'. We have clarified this as requested.
- 4.2** One industry representative said that the change to a specific direction did not clarify the scope of the policy. Some respondents asked for further clarity on the scope of the requirements for receiving PSPs. We have made changes to the specific direction to reflect this feedback and to provide more clarity.
- 4.3** Two respondents felt that the direction did not provide more clarity to PSPs who provide savings accounts or who are users of agency banking. They also raised that some PSPs who use agency banking do not receive Faster Payments.
- 4.4** Some respondents were concerned that excluding credit unions would create inconsistent outcomes. Others provided further feedback on definitions, noting that we had changed some of these since our July consultation.

#### **Question 2: Do you agree that PSPs that are exempt from the liability requirements for fraudulent unauthorised payments under the PSRs 2017 should also be excluded from the scope of our direction requiring reimbursement?**

- 4.5** Nearly all respondents disagreed with our proposal to exclude municipal banks, credit unions and national savings banks from the scope of the policy. Some felt that we had not provided sufficient rationale for this proposal and pointed out that credit unions are not immune to APP scams.
- 4.6** One industry representative stated that their members broadly agreed with our proposal to exclude these PSPs but asked us to clarify if payments to and from credit unions would be excluded, and to update the Faster Payments reimbursement rules accordingly.

- 4.7** Some respondents said that excluding credit unions would leave gaps in consumer protections. They felt that if we did exclude these PSPs it would be important to track their fraud reimbursement levels and tackle any inequalities. Respondents also raised concerns that the exclusion would make these PSPs a more attractive focus for fraudsters. Others worried the exclusion might be confusing for some consumers, and lead to friction or enhanced checks on payments to and from these accounts.
- 4.8** Noting that credit unions are subject to a limited profit margin, some respondents felt that if this was the reason for excluding them from the scope of the policy, then other PSPs with similarly limited ways of making profits should be excluded too. Some acknowledged that credit unions are not-for-profit organisations, but pointed out that other types of PSP, such as electronic money institutions, are subject to limited profit margins.
- 4.9** One respondent agreed that we should exclude credit unions from the reimbursement requirement, feeling that not doing so would have a detrimental effect on the credit union sector. They explained that the credit union sector makes up a small proportion of the UK's financial service industry, ranging from small volunteer organisations to some with staff. The respondent pointed out that credit union fraud rates are low and most people make payments to their accounts via standing order or direct debit.
- 4.10** We have considered the feedback provided but we have decided to exclude credit unions, municipal banks and national savings banks from the scope of the reimbursement policy. We have provided more detail as to why we reached this decision in Chapter 3 of the policy statement.

**Question 3: Does the scope of the direction give effect to its intention as outlined in the policy statement?**

- 4.11** Nearly all respondents agreed that the scope of the direction expressed the intent of the policy statement. A few said we needed to further clarify the scope of the reimbursement requirement.
- 4.12** Two respondents said that they did not think the direction should be revoked at a future date, as they feel it is important that PSPs continue to have a legal obligation to reimburse customers.
- 4.13** One PSP pointed out that the references to the excess, maximum level of reimbursement, and consumer standard of caution are excluded from the direction and instead proposed that these should be in the scheme rules from the start date. While the references to the excess, maximum level of reimbursement, and consumer standard of caution have been moved into the reimbursement rules, they will remain in our control as per our June policy statement.

**Question 4: Do you agree with the move to an ongoing obligation placed on indirect access providers to provide us with a list of any indirect PSP customers they provide access to annually?**

- 4.14** Most respondents welcomed the change to obliging IAPs to provide a list of those to whom they supply access to Faster Payments. However, several respondents raised concerns that annual reporting would not be enough to make sure all participants were aware of their obligations. They felt that IAPs should inform us of changes on a more regular basis.
- 4.15** One PSP asked us why this obligation differed from the obligations under our access work. Several respondents recommended our access work should be amended, rather than introducing a new reporting obligation. One respondent said if we were collecting data for different purposes, we should explain how and provide guidance.
- 4.16** One industry representative disagreed with placing an ongoing and indefinite requirement on IAPs, arguing it was not their responsibility to provide us with this information and would be an unreasonable burden on them. Another respondent suggested that an API solution should be explored instead.
- 4.17** One industry representative proposed that we should instead source this information from the FCA.
- 4.18** We have considered this feedback and made changes highlighted in Chapter 3 of our policy statement.

**Question 5: Do you agree with our proposed timeline for implementation, our assessment of key dependencies, and the feasibility of a go-live date of 7 October 2024?**

- 4.19** Several consumer groups argued that the proposed delay from April 2024 to October 2024 would cause significant harm to consumers. One of these respondents also felt the delay would affect the delivery of the National Fraud Strategy. Another said that as PSPs already communicate with each other and have established procedures for dealing with fraud, industry should not need more time to prepare.
- 4.20** However, most respondents were pleased that we had listened to industry feedback on the April 2024 date. They still had concerns about the feasibility of the October 2024 date, noting it would be difficult to prepare without implementation plans, final Faster Payments rules and the finalised policy.
- 4.21** Some respondents suggested alternative implementation approaches. One respondent said 12 months was not a reasonable timeframe to move from consultation to full implementation. Several respondents pointed out that the deadline for Group 2 PSPs to introduce CoP also falls in October 2024, which may affect some PSPs' readiness. Many respondents expressed concerns that Pay.UK's data solution would not be ready by 7 October 2024.
- 4.22** We have considered all the feedback and have explained our reasoning for selecting 7 October 2024 as the start date of the policy in Chapter 4 of the policy statement.

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12 Endeavour Square  
London E20 1JN  
Telephone: 0300 456 3677  
Website: [www.psr.org.uk](http://www.psr.org.uk)

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