September 2023

MoneySavingExpert

Response to Payment Systems Regulator CP 23/6 - APP fraud: Excess and maximum reimbursement level for FPS and CHAPS

Overview

MoneySavingExpert (MSE) welcomes the opportunity to respond to the Payment Systems Regulator's (PSR) consultation on the excess and maximum reimbursement level for APP fraud.

Overall, MSE is supportive of mandatory reimbursement for APP scams and made this clear in our response to the PSR's initial consultation in December 2022.[1] We feel that – properly overseen – it should lead to stronger, more consistent protection for consumers. We stressed that prevention is better than cure – and so welcomed planned work to improve data sharing between banks to stop this fraud happening in the first place.

However, we have some significant concerns about the regulator's new proposals to impose an excess on victims of such scams seeking reimbursement. MSE does not support the suggestion that PSPs should be free to apply a partial excess when reimbursing a customer for APP fraud. Such a move would compound the hardship already faced by victims, and there is no robust evidence to back up the argument that a low or non-existent excess would lead to a reduction in customer caution.

Our submission will focus broadly on addressing questions 1, 2, 3 and 4 as below for the different excess options proposed by the PSR.

- **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?**
- **Are these factors the correct ones when considering the excess?**
- **Is there anything else we should consider when setting the level for the excess?**
- **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?**

MSE strongly disagrees with the proposal that PSPs should be free to apply a fixed excess at the levels currently suggested when reimbursing a customer for APP fraud.

The imposition of such a fee would effectively act as a minimum threshold for reimbursement claims and prevent many from being accepted. This is troubling given that the PSR itself decided to remove

[1] MoneySavingExpert.com, "Response to Payment Systems Regulator: Requiring reimbursement for Authorised Push Payment (APP) scams", December 2022. https://www.moneysavingexpert.com/content/dam/mse/campaigns/PSR-Consultation-APP-scams-December2022.pdf (This and all other links last accessed 15 September 2023).

a proposed minimum claim threshold of up to £100 in response to feedback on its initial consultation, clearly understanding the case for this to be axed.[2]

Responding to this earlier consultation in December 2022, MSE raised concerns that the proposed minimum claim threshold could lead to the possibility of APP fraudsters migrating to different tactics and adopting a "little and often" approach to target their victims through smaller payments. Where there are gaps in consumer protections, there is always a risk that the problem could shift to those areas where safeguards are the weakest.

The same concerns and principles very much apply in the case of the fixed excess options proposed here. We are alarmed that the PSR is currently exploring the possibility of either a £100 or £250 fixed excess. Apart from the fact that this represents a significant increase on the initial proposal of an excess of up to £35, such a move would have clear and obvious negative consequences on victims of APP fraud. As this consultation document itself directly highlights, the volume of total APP fraud below the value of £100 is 32%, rising to 54% when considering APP fraud below the value of £250.[3] As it stands, imposing these fixed excesses would therefore – very worryingly – essentially wipe out the prospect of either a third, or over half, of possible reimbursement claims being processed.

If a fixed excess was imposed – though we strongly disagree with such a move – it is vital that mandatory reimbursement for APP fraud is considered on a per case basis, rather than per transaction. Otherwise, if a victim was repeatedly scammed by the same or linked party out of 'smaller' amounts, they could end up getting a negligible amount of their money back – or none at all.

Moreover, there is a risk that those who are least able to shoulder the burden of financial losses from APP scams could end up being increasingly targeted by fraudsters due to this proposal.

What constitutes a significant amount of money vastly differs depending on consumers' personal circumstances. For someone with low financial resilience, for example, losing an amount of money up to, or around, £100 or £250 through an APP scam and having little to no recourse to reimbursement could cause notable financial and emotional detriment. There is a danger that people who can least afford to lose money could end up increasingly targeted by fraudsters, as these consumers may be more likely to make smaller payments below or around the proposed fixed excesses.

The Financial Conduct Authority (FCA) found that, in May 2022, 12.9 million UK adults had low financial resilience – a quarter (24%) of all UK adults.[4] These are people who are in financial difficulty, or who could quickly find themselves in difficulty if they suffer a financial shock, because, for example, they have little to no savings or are heavily burdened by their domestic bills or credit commitments. Meanwhile, recent research by the Social Market Foundation has shown that seven in

[2] Payment Systems Regulator, "PS23/3: Fighting authorised push payment fraud: a new reimbursement requirement", June 2023, p.7. https://www.psr.org.uk/media/iolpbw0u/ps23-3-app-fraud-reimbursement-policy-statement-final-june-2023.pdf

[3] *Data provided by UK Finance on behalf of eight PSPs for H2 2022. The cases include personal accounts, microbusinesses and charities.* Payment Systems Regulator, "CP 23/6: APP fraud: Excess and maximum reimbursement level for FPS and CHAPS", August 2023, p.11. https://www.psr.org.uk/media/jplkxij4/cp23-6-app-fraud-excess-max-cap-consultation-paper-aug-2023.pdf

[4] Financial Conduct Authority, "Financial Lives 2022: Key findings from the FCA's Financial Lives May 2022 survey", July 2023, p.16. https://www.fca.org.uk/publication/financial-lives/financial-lives-survey-2022-key-findings.pdf

ten (71%) victims of fraud whose annual incomes were under £20,000 report that it had a "major" or "moderate" impact on their economic circumstances.[5]

It is fairer for consumers for there to be no excess in place, but if the PSR was to go ahead with this plan, there must be an exemption for vulnerable customers. Otherwise, the impact of the excess outweighing the reimbursement of smaller claims will disproportionately impact the mental, physical and financial health of some of the most vulnerable.

There is also a possibility that setting a fixed excess of £100 or £250 could lead to under-reporting of APP scams under these amounts.

Such a move could lead to the negative outcome of both consumers and firms under-reporting APP scams below these amounts, disincentivising PSPs from monitoring them and again encouraging scammers to evolve their tactics to defraud people via 'smaller' payments. The PSR itself acknowledges this risk within this consultation document.

The regulator says: *"Our policy will ensure that PSPs are incentivised to take the necessary actions to reduce the likelihood of APP fraud while also recognising the need for customer caution."* However, the imposition of a fixed excess appears to be in contradiction with this statement, as there would be less incentive for firms to tackle APP scams under the amounts of £250 or £100 – both of which take up notable proportions of the overall volume of this type of fraud. Indeed, this is acknowledged in the regulator's own cost benefit analysis – which notes the possibility of *"a slight reduction in PSP incentives to invest in APP fraud prevention – and so a lower reduction in APP fraud".*

If the PSR does follow through with the proposal to implement a fixed excess of any amount, strong and sufficient industry monitoring and reporting requirements need to be in place to counter the risk of inconsistency in the reporting of smaller scams. This is caveated by the fact that MSE remains firmly against the imposition of any excess on victims of APP scams seeking reimbursement.

It is also possible that imposing a fixed excess at one of the levels proposed would lead to consumers themselves also underreporting scams that have occurred, meaning the data available to monitor these fraudulent transactions simply won't be available to firms at worst, and at best, won't be as rich. This is extremely concerning.

MSE would like clarification from the PSR on the idea that customer caution might be reduced if a lower claim excess – or none – was in place, and whether new evidence of this has come to light.

MSE does not anticipate that a lower or non-existent excess would lead to a significant reduction in customer caution or a moral hazard around financial behaviour. We have not come across any evidence to support this argument.

In this consultation document, when discussing the possibility of imposing a fixed excess, the PSR says: *"This option would encourage greater levels of customer caution for smaller payments (relative to larger payments) as customers would lose a larger proportion of the funds in lower-value frauds."*

In light of this assertion, we are keen to understand what robust evidence, if any, the PSR has that a lower excess might lead to a reduction in customer caution.. The fundamental nature of APP fraud,

[5] Social Market Foundation, "The view from the ground: Building a greater understanding of the impact of fraud and how the public view what policymakers should do about it", September 2023, p.24. https://www.smf.co.uk/wp-content/uploads/2023/09/The-view-from-the-ground-September-2023.pdf

and scams more generally, is that people do not know they are victims until after the act has taken place.

Relatedly, it seems unlikely that victims and consumers more generally would possess an intricate working knowledge of the mechanics of APP scam claim excess levels, and therefore that their behaviour would be affected under these circumstances. For example, in its 2022 Financial Lives Survey, the FCA found that 20.3 million (38%) adults rated their knowledge of financial matters as low and 10 million (19%) did not consider themselves to be 'confident and savvy' when it comes to financial services and products.[6]

Qualitative research by Which? from December 2022 among victims of APP scams also found, among other reasons, that these often occurred when victims were beyond their emotional 'window of tolerance'; they were especially stressed, tired or distracted.[7] This increases the likelihood that victims are less able to assess the legitimacy of an interaction with a scammer and so are more susceptible to being defrauded than they otherwise might have been. It therefore seems highly unlikely that the imposition of an excess – fixed or otherwise – for mandatory APP scams reimbursement would have any bearing on consumers' decision-making in this context.

Further, TSB told both the PSR and the Lords Fraud Committee that it has not seen evidence of customers taking less care since the introduction of its own fraud refund guarantee, which sets a higher bar for reimbursement than the CRM code.[8] As the industry initiative which is most directly comparable with the mandatory reimbursement proposals laid out by the PSR, MSE believes this provides further re-assurance.

The percentage excess option would see victims who have been defrauded out of larger amounts disproportionately losing out.

If a victim of APP fraud was scammed out of £25,000 and the percentage excess was set at 10%, they would end up losing £2,500 of their own money. This seems like an inherently unfair and excessive approach. It would likely far exceed the cost of reimbursing the victim and would exacerbate financial and emotional difficulties already being experienced.

In this consultation, the PSR suggests: *"This option would encourage customer caution proportionate to the value of the payment being made."* Again, we have not seen any concrete evidence which backs up this argument. To the contrary, research by Which? shows that consumers are often caught out by the sophisticated tactics of scammers, including the manipulation of known behavioural biases and the creation of an overwhelming sense of urgency which makes it extremely difficult for

[6] Financial Conduct Authority, "Financial Lives 2022: Key findings from the FCA's Financial Lives May 2022 survey", July 2023, p.242. https://www.fca.org.uk/publication/financial-lives/financial-lives-survey-2022-key-findings.pdf

[7] Which?, "The psychology of scams Understanding why consumers fall for APP scams", December 2022, p.4. https://media.product.which.co.uk/prod/files/file/gm-c66f3d70-3928-4dee-bb8b-481405be2b5e-the-psychology-of-scams-understanding-why-consumers-fall-for-app-scams.pdf

[8] PSR Consultation Paper, "Requiring Reimbursement for Authorised push payment (APP) scams," September 2022, p.26. https://www.psr.org.uk/media/kzlncenx/psr-cp22-4-app-scams-reimbursement-september-2022-clean.pdf ; House of Lords Fraud Act 2006 and Digital Fraud Committee, "Report of Session 2022–23, Fighting Fraud: Breaking the Chain," November 2022, p.116. https://publications.parliament.uk/pa/ld5803/ldselect/ldfraudact/87/87.pdf

someone to recognise they are being scammed before it is too late.[9] A percentage excess at the levels proposed feels especially punitive when presented with this context.

Research by the Social Market Foundation found that, among those that were victims of fraud between 2020 and 2023, 70% suffered from at least one second round impact stemming from what they experienced. This included impacts on self-confidence, mental health and the ability to afford goods and services.[10] It seems highly likely that the percentage excess option would contribute to the non-financial harm experienced by victims.

If an excess were to be imposed, a percentage excess with a cap and an exemption for vulnerable customers, would be fairest with these factors in mind, but MSE strongly opposes any form of excess in light of all of the evidence above.

About MoneySavingExpert.com (MSE)

MoneySavingExpert (MSE) MoneySavingExpert.com, founded and Chaired by Martin Lewis, is dedicated to cutting consumers' bills and fighting their corner. It is the UK's biggest and most trusted consumer website. For 20 years, campaigning journalism has been at the heart of MSE's mission. The site is behind many notable campaigns, including student finance reform, reducing energy bills, mortgage help, scam ads regulation and helping consumers reclaim an estimated £1bn in bank charges and £12bn in PPI payouts.

With millions subscribing to receive the weekly MSE's Money Tips email and visiting the site monthly, MSE ranks as YouGov's most recommended brand (all sectors) in the UK. It is also, according to Press Gazette, the UK's largest specialist online news publication, with more traffic than many national newspaper sites. In September 2012, the site joined the MoneySupermarket.com Group PLC

[9] Which?, "The psychology of scams Understanding why consumers fall for APP scams", December 2022, p.4. https://media.product.which.co.uk/prod/files/file/gm-c66f3d70-3928-4dee-bb8b-481405be2b5e-the-psychology-of-scams-understanding-why-consumers-fall-for-app-scams.pdf

[10] Social Market Foundation, "The view from the ground: Building a greater understanding of the impact of fraud and how the public view what policymakers should do about it", September 2023, p.29. https://www.smf.co.uk/wp-content/uploads/2023/09/The-view-from-the-ground-September-2023.pdf