Consultation Response

APP fraud: Excess and maximum reimbursement level for Faster Payments and CHAPS.

Payment Systems Regulator (PSR)

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About this consultation

The Payment Systems Regulator (PSR) seeks views on excess and maximum reimbursement levels for APP fraud reimbursements[1]. The consultation follows the PSR's policy statement issued in June, confirming it will mandate all payment system providers (PSPs) to reimburse authorised push payment (APP) fraud losses in all but exceptional circumstances.

The PSR states that an appropriate claim excess will encourage customer caution at the point of payment, ease operational demand and minimise financial loss. The regulator also proposes allowing PSPs to apply a partial excess on APP fraud repayments to victims if they wish to do so. The excess cannot, however, be applied to vulnerable consumers.

There are three identified excess-level options:

- Fixed excess.
- Percentage excess.
- Percentage excess with a cap.

The regulator also proposes to cap the maximum reimbursement level for claims at £415,000, in line with the current Financial Ombudsman Service (FOS) limit, covering over 99% of current APP fraud victims. The regulator is proposing that this limit will apply to vulnerable consumers. PSPs will be free to increase or remove the reimbursement level entirely for their customers.

Key points and recommendations

- Age UK believes the primary focus should be minimising financial loss for consumers, so we are not in favour of applying any excess level to victims of APP scams.

- If the regulator, against our better judgement, chooses to penalise many innocent victims with its plans of levying an excess, it would be crucial that it mandate firms to redirect the funds to educational campaigns to raise awareness of the complex nature of fraud, help people stay safe, and ensure that criminal accountability is the focus instead of blaming victims.

- Although we recognise the factors outlined for setting the excess level, the primary emphasis should be on the last two points: ease of understanding and minimising financial loss for consumers, especially when considering the fixed income of some older demographics.

- Age UK agrees that the excess should not apply to vulnerable consumers, and the regulator should require PSPs to assess different aspects of vulnerability, including financial vulnerability, and compel firms not to apply the excess if victims are found financially vulnerable.

- Age UK grudgingly agrees it is reasonable to introduce a maximum reimbursement level to align with the Financial Ombudsman Service and be adjusted based on inflation. This approach ensures that older consumers, especially those who might be victims of fraud, are adequately protected and can trust a system that evolves in line with economic realities. But we recommend that this not be set as a maximum reimbursement level and instead be seen as a benchmark for PSPs to further investigate the circumstances with a view to still reimbursing above the £415,000 - especially when customers are vulnerable.

- £100 or £250 are both extremely high figures for the excess to be set at, which we believe will prevent a substantial number of consumers from seeking redress. For many people, especially those on low incomes, having any excess at all will introduce a behavioural barrier to applying.

About Age UK

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people have enough money, enjoy life and feel well, receive high-quality health and care; are comfortable, safe, and secure at home, and feel valued and able to participate.

Introduction

Age UK welcomes the opportunity to support the development of the redress process for victims of APP fraud – scams that happen when someone is tricked into sending money to a fraudster posing as a genuine payee. In today's digital age, APP fraud has become a persistent threat, causing significant distress and financial losses to victims. As we continue to face the challenges of rising inflation and costly living, consumers must be protected and feel confident about using financial services.

While the decision to introduce mandatory reimbursement is welcome, there is an ongoing need for wider measures to protect consumers while preventing criminals from using financial services for fraudulent activities.

Age UK is committed to working closely with the regulator, firms, Pay.UK, and other stakeholders to ensure older consumers, especially those vulnerable, are protected through mandatory reimbursement and preventative measures.

Response

Age UK opposes the proposal that PSPs should be free to levy a partial excess or any excess at all.

We firmly believe that the application of an excess is not just a financial concern but a matter of principle. Older consumers, who are often on fixed incomes, should not bear the financial brunt of fraudulent activities they did not willingly partake in. Levying an excess will penalise victims rather than address the fraud's root cause, the criminals. As we transition to an increasingly digital world, we must foster trust and confidence in digital payment systems. Eliminating the excess would send a strong message that the regulator prioritises consumers' well-being and financial security, especially those who feel the strain from the cost-of-living crisis, over-profit margins or risk management strategies.

Moreover, allowing PSPs to levy the level of excess at their discretion will create a confusing and unequal landscape for consumers of different firms, even more so for individuals who hold payment accounts across multiple PSPs. This can be worsened further if, as part of the fraud, the victim has made payments across different banks and potentially payment systems, with disparate protections offered across schemes.

A fixed excess set at even £100 will be off-putting to a number of consumers. It would introduce a behavioural bias into the system that acts as a barrier to people who may want to reclaim their money and also weaken the banks' efforts to tackle low-level fraud, which can be insidious and difficult to tackle. We urge the PSR to move away from an excess, which will only serve to weaken the entire regime, and if there is to be an excess, it should be set at a much lower level, such as £10.

However, if the regulator does choose to penalise many innocent victims with its plans of levying an excess, it is crucial that it mandate firms to redirect the funds to educational campaigns to raise awareness of the complex nature of fraud, how to stay safe and ensure that criminal accountability is the focus instead of blaming victims.

Although we recognise the factors outlined for setting the excess level, the primary emphasis should be on the last two points: ease of understanding and minimising financial loss for consumers, especially when considering the fixed income of some older demographics.

- **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**

While we acknowledge why the regulator wants to incentivise customer caution – to reduce the hypothetical impact of moral hazard (a situation in which consumers engage in risky behaviour or fail to act in good faith because they know PSPs will reimburse them if they become a victim) - it's crucial to remember that under the Contingent Reimbursement Model Code (CRM Code)[2], victims of APP fraud get all their money back if they have taken all the steps set out in the code. No relevant evidence suggests consumers are more inclined to take risks under that code or will do so because of the mandatory reimbursement requirement. The theoretical claims are also at odds with TSB's real-life experience of reimbursing 97% of victims under its Fraud Refund Guarantee. TSB has also revealed that its fraud losses are almost a fifth below the industry average, although it pays out in a much higher proportion of cases[3].

The level of operational demand for PSPs is undoubtedly a valid concern. Still, it should not overshadow the potential financial and emotional distress an excess might cause an older person, especially those on a fixed income. The system should be transparent. Easy to navigate, and, most importantly, compassionate. While all the factors mentioned are relevant, the balance should tilt more towards consumer protection and understanding, particularly about older victims.

Age UK agrees that the excess should not apply to vulnerable consumers, and the regulator should require PSPs to assess different aspects of vulnerability, including financial vulnerability and compel firms not to apply the excess if victims are found financially vulnerable.

Against the backdrop of high inflation, the impact of cost-of-living increases and, more widely, global economic and political volatility, we anticipate a further evolution and increasing scale of customer vulnerabilities. Research from Pay.UK, the industry body overseeing the Faster Payment system, reveals that people with at least one characteristic of financial vulnerability are more likely to suffer adverse effects in many areas, from being targeted by fraudsters to struggling with bill payments and taking on debts they cannot afford[4]. The latest figures show that 2.1 million pensioners (18%) live in relative poverty in the UK[5]. If the regulator leaves it to the goodwill of firms to determine whether or not to apply the excess, then we anticipate most banks will consistently decide to use it. This would risk pushing impoverished victims further into financial distress. Therefore, the PSR should require firms to assess all aspects of vulnerability, including economic vulnerability, and compel them not to apply the excess if financial vulnerability is determined.

Age UK believes the primary focus should be minimising financial loss for older consumers, so we're against applying any excess.

For older consumers, many of whom are on fixed incomes and face steeper barriers to digital access, applying a fixed or percentage-based excess may be particularly problematic.

A fixed value might seem straightforward, but it could disproportionately affect those who fall victim to smaller value frauds, such as purchase fraud, which comprised 57% of all APP fraud in 2022[6]. Victims with smaller claims than the excess of, say, £100 might receive no reimbursement if the excess is set at £100 or higher, giving them little to no incentive to report the fraud, a terrible position as we know fraud is already heavily underreported. The regulator rightly identifies that other consequences would include firms not having a financial incentive to invest in fraud prevention to prevent fraudulent transactions falling below or close to the excess, and we agree that this would be an unacceptable outcome.

While a percentage excess might be seen as fairer, it could result in significant financial burdens for those unfortunate enough to be victims of larger loss frauds, which evidence suggests older people are more likely to be[7].

Since the regulator is set on creating a liability framework to reduce fraud without creating moral hazard, the unique challenges consumers are facing must be at the forefront of the policy decision. Therefore, we don't believe in applying the excess.

Subjecting vulnerable older victims to a maximum reimbursement level could penalise them for their vulnerability. The regulator should provide financial protection and emotional and psychological reassurance by removing the maximum reimbursement cap for this older consumers who fall into this category.

Vulnerable older people frequently face barriers to accessing the digital landscape. Many have grown up in a world without the pervasive influence of technology and face barriers to accessing digital skills training and support. This makes them prime targets for sophisticated scams and frauds. Given this heightened vulnerability, it's only just that the financial systems in place offer them additional support.

Subjecting vulnerable older victims to a maximum reimbursement level could be seen as penalising them for their vulnerability. Financial losses due to fraud can devastate anyone, but the impact can often be life-altering for older victims, especially those on fixed incomes. Vulnerable older victims may not have the means or the time to recover from significant financial setbacks. The regulator should provide financial protection and emotional and psychological reassurance by removing the maximum.

Furthermore, the principle of fairness dictates that those most at risk should receive the most protection. In this case, a one-size-fits-all approach might be more equitable on the surface, but it fails to account for the unique challenges vulnerable older people face. We urge the regulator to remove the maximum reimbursement level for vulnerable older victims. After all, the Financial Ombudsman Service (FOS) limit covers over 99% of current APP fraud victims.

Age UK grudgingly agrees the maximum reimbursement level to align with the Financial Ombudsman Service and be adjusted based on inflation. But we recommend that this not be set as a maximum reimbursement level and instead be seen as a benchmark for PSPs to further investigate the circumstances with a view to still reimbursing above the £415,000 - especially when customers are vulnerable.

The FOS limit, which currently stands at £415,000[8], is a well-understood benchmark and sufficiently high to cover most fraud cases. We can see why aligning with this limit can ensure consistency, predictability, and ease of understanding for consumers, especially older people who value clarity in financial matters.

However, the dynamic nature of the economy and financial landscape necessitates periodic reviews of such limits. The FOS limit increases annually with inflation, as set by the Financial Conduct Authority (FCA). This inflation-based adjustment ensures that the limit remains relevant and reflects the broader economic context. For older consumers, many of whom are on fixed incomes, it is essential that any reimbursement limit maintains pace with inflation over time. Thus, an inflation-adjusted increase would be a logical choice to ensure that the real-term value of the reimbursement remains consistent.

Age UK supports the maximum reimbursement level to align with the Financial Ombudsman Service and be adjusted based on inflation. But we recommend that this not be set as a maximum reimbursement level and instead be seen as a benchmark for PSPs to further investigate the circumstances with a view to still reimbursing above the £415,000 - especially when customers are vulnerable.

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[1] https://www.psr.org.uk/media/jplkxij4/cp23-6-app-fraud-excess-max-cap-consultation-paper-aug-2023.pdf
[2] https://www.lendingstandardsboard.org.uk/crm-code/#:~:text=The%20CRM%20Code%20sets%20out,belongs%20to%20a%20legitimate%20payee.
[3] https://www.tsb.co.uk/news-releases/tsb-marks-three-years-of-fraud-refund-guarantee/
[4] https://newseventsinsights.wearepay.uk/media/t35fktsa/financially-vulnerable-research-240822.pdf
[5] https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/money-matters/poverty-in-later-life-briefing-june-2023.pdf
[6] https://www.ukfinance.org.uk/system/files/2023-05/Annual%20Fraud%20Report%202023_0.pdf
[7] https://data.actionfraud.police.uk/cms/wp-content/uploads/2021/07/2020-21-Annual-Assessment-Fraud-Crime-Trends.pdf
[8] https://www.financial-ombudsman.org.uk/news-events/changes-award-limits#:~:text=This%20limit%20is%20adjusted%20each,or%20after%201%20April%202019