

Consultation Response

A new reimbursement requirement: Faster Payments APP scam reimbursement rules and operator monitoring.

Payment Systems Regulator

August 2023

Contact: John.kamoto@ageuk.org.uk

All rights reserved. Third parties may only reproduce this paper or parts of it for academic, educational or research purposes or where the prior consent of Age UK has been obtained for influencing or developing policy and practice.

Age UK
7th Floor, One America Square
17 Crosswall
London
EC3N 2LB
T 0800 169 87 87 F 020 3033 1000
E policy@ageuk.org.uk
www.ageuk.org.uk

Age UK is a charitable company limited by guarantee and registered in England (registered charity number 1128267 and registered company number 6825798). The registered address is Tavis House
1-6 Tavistock Square, London WC1H 9NA.

About this consultation

Following the Royal Assent for the Financial Services and Markets Act 2023,¹ the Payment Systems Regulator (PSR) is introducing a new reimbursement requirement for Authorised Push Payment (APP) scams within Faster Payments. APP scams happen when a fraudster deceives someone into sending a payment to an account outside their control. The PSR is consulting on the package of legal instruments² that will affect the new reimbursement requirement outlined in their recently published policy statement (PS23/3).³ The regulator intends to finalise and publish all three legal instruments in December 2023, with implementation planned for April 2024. The PSR is requiring Pay.UK, the industry body overseeing the Faster Payment system, to amend Faster Payment rules. The regulator wants views on what is necessary for firms' operational readiness.

Key points and recommendations

- Age UK supports improvements to the redress process for victims of APP scams but is keen to ensure these proposals fully account for the needs of older people.
- We believe the proposed package of the three legal instruments outlined gives full effect to the policy set out in the PSR policy statement and should support successful implementation.
- Age UK remains concerned about the inherent conflict of interest of Pay.UK in the proposed reimbursement scheme as it is an industry body.
- While smaller Payment System Providers (PSPs) may face greater barriers to actioning the data collection processes needed to meet the requirements of Pay.UK's compliance regime, the 'go live' date still remains over six months away. We believe this affords PSPs sufficient time to prepare.
- We would also encourage the regulator to work with Pay.UK to gather data on demographic factors to assess if certain consumer cohorts experience a differential reimbursement rate or customer journey with their PSP. We are concerned that age may be a disadvantaging factor for consumers and urge the regulator and Payment Systems Operator (PSO) to account for this.
- Pay.UK should also endeavour to monitor the use of the exceptions to the reimbursement requirement by PSPs to ensure the standards of consumer caution are being used appropriately.

- Age UK is also mindful of the potential benefits this data could bring in terms of delivering more comprehensive support. Data collection should ideally assist holistic victim support mechanisms by requiring PSPs to signpost victims to law enforcement, linked agencies, and community and third-sector organisations to support victims.

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 supports improvements to the redress process for victims of APP scams but is keen to ensure these proposals fully account for the needs of older people. APP fraud has increased in recent years and remains the most significant type of fraud in the UK. UK Finance, the trade association for the banking and finance industry, has reported that APP fraud losses reached £485.2 million in 2022. Our focus is to ensure that older consumers are protected from being targeted by fraudsters, feel supported financially and emotionally if they are victimised, and can seek redress and support from relevant authorities.

Therefore, we welcome the PSR's commitment to fighting APP fraud by introducing a new requirement for PSPs to reimburse victims. We believe the approach will provide much-needed redress and incentivise the payment industry to invest in end-to-end fraud prevention to increase consumer protection.

Question 1: Does our proposed package of the three legal instruments outlined 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?

Age UK believes the proposed package of the three legal instruments outlined will broadly give effect to the policy set out in the PSR policy statement and should support successful

implementation. Overall, these proposals are likely to benefit older consumers, and we hope the regulator can implement them in the timeline outlined in the consultation document to ensure the problem of APP fraud can be dealt with promptly. However, we await further details on what implementation will look like in practice.

Some older people may still experience difficulties in seeking redress, for example, if they feel a sense of shame from being defrauded or are struggling with the process. The regulator should work with the banks to promote the scheme so that awareness is high and the associated stigma is low.

Age UK remains concerned about the inherent conflict of interest of Pay.UK as an industry body in the proposed reimbursement scheme, a sentiment the Treasury Committee shares. We are, therefore, happy to see that the PSO will continue to be subject to oversight and regulation by the PSR.⁴ Both bodies must be held fully accountable for the success of the rules.

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?

Implementation should occur as soon as possible, but we understand that firms need time to reach operational readiness. While smaller Payment System Providers (PSPs) may face greater barriers to actioning the data collection processes needed to meet the requirements of Pay.UK’s compliance regime, the ‘go live’ date still remains over six months away. We believe this affords PSPs sufficient time to prepare. APP fraud is still causing financial and emotional devastation to many victims. We want urgent action to protect older people from this insidious crime.

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?

Given the significant importance of the data collected by PSPs in combatting fraud, reporting frequency from firms should be designed to maximise transparency and oversight. Firms should have the financial means to balance the cost and burden of reporting, and if some smaller firms struggle, then we encourage the PSR to generate best practice guidance to assist with streamlining processes for all.

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

Age UK broadly supports the PSR's proposals for what data Pay.UK should gather, as set out in section 5.3 of the draft data and information collection appendix, as we believe accurate reporting of the proposed information will facilitate adequate oversight by the regulator. We also agree that Pay.UK should retain the ability to be dynamic in expanding the range of data collected.

We would also encourage the regulator to work with Pay.UK to gather data on demographic factors to assess if certain consumer cohorts experience a differential reimbursement rate or customer journey with their PSP. Age UK is particularly keen for age to be one of the factors that the regulator and PSO account for. Pay.UK should also endeavour to monitor the use of the exceptions to the reimbursement requirement by PSPs to ensure the standards of consumer caution are properly upheld, especially concerning their exceptions to all consumers.

Age UK is also mindful of the potential benefits this data could bring in terms of delivering wider support. Data collection should ideally assist holistic victim support mechanisms by requiring PSPs to signpost victims to law enforcement, linked agencies, and community and third-sector organisations to support victims.

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

Age UK is glad the regulator requested that the PSO prepare proposals for an effective regime to monitor all PSPs' compliance with the reimbursement rules, whether they participate in Faster Payments directly or indirectly. We agree that a critical objective of the compliance monitoring regime should be to quickly and clearly identify breaches of the reimbursement rules.

Therefore, the approach and principles laid out in the draft document on operator monitoring appear sound. We believe an effective system for compliance monitoring is one that monitors the overall nature and extent of compliance by PSPs with the reimbursement rules on an ongoing basis, includes effective arrangements to check and verify that PSPs are consistently complying with the reimbursement rules, provides an effective means of identifying non-compliance by PSPs promptly and clearly, and ensure that breaches are addressed appropriately in line with applicable enforcement procedures. As the PSR intends to have this in place, we are happy with the approach and principles – although, of course, the proof of the pudding will be in the eating, so we will be watching with interest how it operates in practice.

Individual legal instruments

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

The PSR will issue a specific requirement under section 55 of the Financial Services (Banking Reform) Act 2013 (FSBRA)⁵ to require Pay.UK to amend Faster Payments rules to cover: the reimbursement requirement; claim excess; maximum level of reimbursement; time limit to claim; notifying the receiving PSP; sharing the reimbursement cost; time limit to reimburse; and repatriation.

The specific requirement covers the amendment of the faster payment rules to encompass new regulatory requirements set by the PSR, requirements retained by the PSR initially, with the potential to become Faster Payment rules in the future, and the requirements Pay.UK will be responsible from day one as outlined below:

- **Category 1 - Regulatory requirements set by the PSR:**
 - The PSR will take responsibility for the reimbursement requirement and its scope for the foreseeable future. Pay.UK will embed these in Faster Payment rules and impose them on direct and indirect participants. Pay.UK is not expected to propose changes to any rules that fall within Category 1.
- **Category 2 - Requirements retained by the PSR initially, with the potential to become Faster Payments rules in the future:**
 - Some aspects of the regime will transition to Pay.UK when the PSR deems it has sufficient capability to manage and enforce them. These are the maximum claim excess (fixed or percentage excess) and the maximum level of reimbursement (aligned to the statutory Financial Ombudsman Service (FOS) limit at £415,000). The consumer standards of caution (first-party-fraud and gross negligence) and the consumer standard of caution exception (vulnerability).
- **Category 3 - Requirements Pay.UK will be responsible from day one:**
 - Pay.UK will take responsibility for ensuring all remaining rules function effectively from day one, keeping them under review just as it does with Faster Payment rules. The PSR will be responsible for 50:50 cost allocation of reimbursement between sending and receiving PSPs; an option for PSPs to refuse claims submitted after 13 months; the five-business-day deadline for reimbursing customers; and the 'stop the clock' provision – which will pause the five-day business-day reimbursement timescale to allow sending PSPs to request further information to assess claims.

Pay.UK will be required to notify the PSR of any proposed changes to the Category 3 reimbursement rules.

We are broadly happy with the specific requirement for the PSO to amend Faster Payment rules. The PSO is in the best position to do so. We are also content that the PSR will be responsible for the reimbursement requirement, its scope for the foreseeable, and that Pay.UK is not expected to change any rules that fall within Category 1. The regulator must have good oversight of the regulatory requirements. So, although Category 2 requirements are retained by the PSR initially and then potentially transitioned to the PSO, we want the PSO to work closely with the regulator when deciding to change them.

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

The PSR will issue a specific direction under section 54 of FSBRA to require Pay.UK to create and implement effective monitoring of PSPs in line with specific requirements and general direction.

We understand that Pay.UK is in the best position to implement a monitoring mechanism given the organisation's relationship with industry and thus will be flexible in responding to changing conditions. Despite this, we want Pay.UK to report to the PSR on the nature, extent, and effectiveness of compliance by PSPs to ensure the regulator can maintain its duty to consumer interest in having a role in sanctioning non-compliant firms.

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

The PSR will issue a general direction to participating PSPs under section 54⁶ of FSBRA; details of this general direction will be consulted in October 2023.

We generally support the PSR issuing a general direction to participating PSPs under section 54 of FSBRA, as we argued in a previous consultation response. We look forward to commenting on the details of this general direction in October.

CHAPS:

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

It would be logical to follow a similar approach to imposing a reimbursement requirement with the CHAPS payment system as the Bank of England desires. And Age UK would welcome additional reimbursement mechanisms across broader payment systems to ensure policy alignment. As well as extending to CHAPS, BACS, and other payment

systems should be considered for mandatory reimbursement going forward to ensure consistency across payment systems for requiring reimbursement from fraud. The PSR should consider adapting the reimbursement mechanism to other payment systems once the new system is up and running.

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

Given the suggested implementation date, the PSR must consider instructing that firms promote the rule changes offline and online to ensure all consumers are fully informed before implementing the reimbursement requirement.

¹ <https://bills.parliament.uk/bills/3326/stages/17817>

² <https://www.psr.org.uk/media/c11chetv/cp23-4-app-scams-reimbursement-draft-legal-instruments-july-2023.pdf>

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

⁴ <https://committees.parliament.uk/publications/40330/documents/197115/default/>

⁵ <https://www.legislation.gov.uk/ukpga/2013/33/contents/enacted>

⁶ <https://www.legislation.gov.uk/ukpga/2013/33/section/54/enacted>