LSB response to CP24/11: Faster Payments APP scams: Changing the maximum level of reimbursement

We are disappointed that the PSR has decided to reduce the consumer protections contained within the mandatory reimbursement scheme, especially so close to 7 October, when the scheme goes live. We are concerned that the logic and analysis of this decision is flawed and will ultimately result in significant harm for some victims of APP fraud.

What are your views on the proposal to change the maximum level of reimbursement from the outset of the policy, to set it to the FSCS limit, which is currently £85,000?

We have significant concerns about this decrease in consumer protection and the impact that it will have on victims of APP fraud. The CRM Code, overseen by the LSB, covers over 90% of Faster Payments and does not set a maximum reimbursement limit for customers who have fallen victim to APP fraud.

There has already been a compromise between consumer protection and industry interest in the move from the CRM Code to statutory rules when the PSR consulted on there being no maximum level of reimbursement, but was persuaded of the risks this could pose. Following further consultation, the limit was reduced to £415,000 per claim. In reaching this figure, the PSR stated that this would cover 98% of APP scams by value and the risk that any lower threshold would be too low. A further and last-minute reduction to £85,000 (which would now cover only 90% of cases, with the remaining 8% accounting for £30m of customer losses), appears to place the interests of some areas of industry over that of consumers.

We do not believe that this decrease in protections will meet the PSR's expectation that its package of new requirements will provide greater protections to consumers using Faster Payments, drive increased trust and confidence, or incentivise PSPs to drive fraud out of their systems. The consultation paper (CP) states that the likelihood of a small PSP receiving a high-value scam is low, because the overall volume of high-value APP scams is low. As such, we would question why the limit cannot remain at £415,000. Particularly when a customer has the right to take their case to the Financial Ombudsman Service (FOS) which can issue awards up to £430,000.

The CP acknowledges that reducing the maximum claim limit under the requirement is likely to increase the number of complaints made to FOS, as more scam losses will not be fully reimbursed that way. The starting point should not be that because customers can take their case to FOS, that this is an alternative to statutory regulation setting protections at the appropriate level. While the CP states that there were 393 scam cases sent by 15 firms in 2023 which were between £85,000 and £415,000, it is important to note that these cases occurred under the CRM Code which does not have a maximum reimbursement limit. If these losses occurred after 7 October, these customers would not have been reimbursed.

We are unconvinced by the argument that the decision to align the maximum level of reimbursement with the Financial Services Compensation Scheme (FSCS) limit is because this is a figure that is familiar to consumers. Research from FSCS in 2023 found that 72% of consumers were aware of the FSCS scheme, but only 28% of consumers had a good understanding of what protection was provided.[1] In August this year, Which? found that 35% of customers had heard about the mandatory reimbursement protections being introduced.[2] Therefore the argument that aligning with FSCS protections will be easier for consumers to understand because they are already familiar with it, does not stand up to scrutiny since a greater percentage of consumers are aware of the mandatory reimbursement requirement, than are aware of the details of the FSCS limit.

What are your views on the impacts (including costs, benefits, and risks) of operationalizing an initial maximum limit of £85,000 from 7 October 2024? For example, we'd welcome views on:
c. The impact that you consider our proposed approach would have on firm' incentives to put in place effective fraud prevention measures

Over the last five years the CRM Code has incentivised signatory firms to invest in systems and controls to enable them to deliver better outcomes for customers via a clear focus on prevention, and therefore reducing the financial and psychological harm caused by falling victim to APP fraud. The new rules mean that liability for reimbursing customers will be split 50:50 between the sending and receiving firm, so that both firms are required to take equal liability for reimbursing customers who fall victim to APP fraud. We welcomed this change as it creates greater incentives on receiving firms to invest in systems and controls to detect and prevent fraudulent payments and to prevent criminals using their accounts to move money on.

The Code enables PSPs to consider whether their acts or omissions contributed to the success of the scam, and this is reflected in the reimbursement liability for both firms. The new rules do not allow for this to be taken into account, therefore a reduction in the maximum level of liability means that those firms who do not have robust and effective fraud prevention measures in place, have less of an incentive to invest in appropriate systems and controls. We do not believe that firms with poor anti-fraud measures should be protected at the expense of victims of APP fraud.

The CP highlights some of the tools available to PSPs along with the results of Pay.UK's fraud detection and prevention pilot, and initiatives such as CIFAS' information sharing system. However, the consultation paper states that there is a small number of PSPs who receive a disproportionately high number of APP scams relative to their smaller size and that non-directed PSPs received 53% of all fraudulent transactions in 2023. This demonstrates that some PSPs still have significant work to do to invest in systems and controls to prevent criminals from accessing their payments system. This investment should not be at the detriment of their customers.

[1] https://www.fscs.org.uk/globalassets/industry-resources/research/202312-fscs-beyond-compensation-fscs-final.pdf
[2] https://www.which.co.uk/news/article/new-fraud-protections-to-be-watered-down-after-industry-lobbying-aYAvI0K06plD

Please provide your views on the Bank's proposed approach to change the maximum level of reimbursement for CHAPS to align with our proposal for Faster Payments (which is to set it to the FSCS limit, currently £85,000)

We are not convinced of the rationale for reducing the maximum level of reimbursement for Faster Payments, therefore it follows that we are of the same view when it comes to CHAPs payments. As CHAPS tends to be used for larger value payments, we are not clear that the limits should be aligned. We would also question whether aligning the limits would drive the necessary incentives when it comes to preventing fraud within the CHAPS payment system.

The lack of data in the CP in relation to scams involving CHAPS payments means that the potential harm is unknown and the lack of analysis, along with the recognition that the proportion of customers who would be reimbursed would likely be less than that for Faster Payments, means that more data is needed to be able to quantify what the level of harm might be before any decision is reached.