



Response to The Payment Service Regulator's CP24/11 on Reducing the Reimbursement Threshold

<https://www.psr.org.uk/publications/consultations/cp2411-faster-payments-app-scams-changing-the-maximum-level-of-reimbursement/>

From Transparency Task Force, in an organisational capacity

Lead author: Richard Emery

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About the Transparency Task Force ('TTF')

TTF is a Certified Social Enterprise that exists to make an impact, not a profit. Its mission is to promote ongoing reform of the financial sector. It is an international community of over 5,000 people who are drawn from all business sectors but have a common concern that financial services need to serve society better. TTF members have been pleased to make submissions during the development of the new Reimbursement Requirement and we hope that this submission will be helpful.

Background

The Retail Banking sector has been failing to protect its customers from fraud for many years.

For example, in 2014 the case of Tidal Energy Limited -v- Bank of Scotland clearly demonstrated that relying on the unverified sort code and account number to make Faster Payments and

CHAPS exposed their customers to a clear and obvious risk of fraud, but it was not until 2020 that some banks (but by no means all) started offering Confirmation of Payee.

In May 2019 a number of major banks signed up to the CRM Code, but recent research has shown that 5 years later a number of banks are still reimbursing less than 10% of cases, and the FOS uphold rate for APPScam/Fraud complaints is amongst the highest of all the business areas they handle because the banks continue to fail to fulfill their obligations.

The development of the new Reimbursement Requirement has already resulted in positive changes with many firms seeking to improve their fraud protections, on both the sending and receiving side, but firms need either a carrot or a stick, or some combination of both, to accelerate these changes.

Why £415k?

The PSR undertook a series of comprehensive consultations and correctly concluded that it was entirely appropriate to set the maximum level of reimbursement to be the same as the maximum level for an FOS reimbursement, which was then £415k.

Why not £415?

The argument for reducing the £415k to £85k appears to focus on the potential prudential impact on a small number of PSPs who receive a disproportionately high number of APP scam payments relative to their smaller size. Paragraph 3.8 records that "Four small PSPs are in the top 20 receivers of fraud. Their fraud rate is 20 times that of the largest PSPs". I have underlined "receive" and "receivers" because it is important to understand that the concern that is being raised is primarily in respect of a small number of PSPs who appear to be failing to fulfill their obligations under AML and CDD by hosting accounts that are being used for fraud.

How can this be right?

Paragraph 3.28 shows that if the maximum level is reduced to £85k then 8% of victims who would be fully reimbursed if it was £415k will not be fully reimbursed.

This is not just "8% of victims". These are real people who have been the victims of APPScams/Fraud.

Earlier this year the FCA prosecuted a fraudster who accepted c.£19m in 'investments' from c.200 people. With an average value of £95,000 it is obvious that a significant number of people will have invested well above £85,000. I know the impact that these losses are having on the victims of this very sophisticated APPScam/Fraud; homes have been lost, marriages have collapsed, futures have been ruined and mental health breakdowns are far from uncommon. And all this is happening while the victims are waiting, and hoping, for reimbursement. What would it be like if they knew that there was no hope of reimbursement?

In paragraph 3.9 you state that: "[you] are keen to ensure that the maximum level of reimbursement drives incentives for firms to invest to protect their customers, while maintaining effective competition in the market. More broadly, as we have set out previously, the policy is designed to impose financial costs on those PSPs that are least effective in preventing fraud against and by their account holders. The potential exit of a firm that performs particularly poorly in this regard does not necessarily reduce effective competition across the market."

The negative impact on the victims of higher value APPScams/Fraud must be considered to be more important than the prudential risk to a small number of PSPs who haven't been suffering the financial penalties of the CRM Code, because they are the receiving banks, and who have consistently failed to make appropriate investment in fraud prevention.

The maximum level of reimbursement must, therefore, remain at £415k.

An Alternative 4-Day Delay

Whilst the question of the 4-day delay is not part of this consultation I firmly believe that the PSR should be working with the FCA to consider an alternative approach to the 4-day delay that is outlined in the FCA's GC24/5, and the beneficial impact for smaller PSPs when they are at risk of receiving high value fraudulent transactions.

The FCA and the Treasury are proposing changes to Regulation 86 of PSR 2017 such that the sending bank can delay a payment for up to 4 business days if they have a reasonable suspicion of fraud. I believe that there is an alternative approach that would provide significant assistance to smaller PSPs when they receive payments that might be the result of fraud or deception.

Put simply, the sending bank should be required to submit the payment to the receiving bank by no later than the end of the next business day (as they do now) but the receiving bank should have up to the end of the fourth business day to credit it to their customer's account. Where

the sending bank is concerned that there may be a risk of fraud they could 'tag' the payment to alert the receiving bank of their concern.

I make three points in support of this proposal.

1) In a very high percentage of cases where the sending bank is concerned about the risk of fraud they are able to contact their customer well before the end of the next business day. A further delay at this point will be of little help and risks unnecessary delays because the sending bank has no visibility of the payee's bank account and cannot assess the risk of that account being used for fraud.

2) The receiving bank has full visibility of the account details and transaction history of the receiving account and is able to contact their customer to establish the details of the credit to the account. This puts the receiving bank in a far better position to assess the risk.

3) The new Reimbursement Requirement means that the receiving bank will bear 50% of the reimbursement. This proposal gives them a new tool to help them manage that risk.

I hope that this submission is helpful and would be happy to enter into dialogue on the Alternative 4-day Delay proposal, or any other aspect of this submission