



Law Society
of Scotland

Consultation Response

CP 23/6: APP fraud: Excess and maximum reimbursement level for FPS and CHAPS.

September 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Consumer Law sub-committee welcomes the opportunity to consider and respond to the Payment Systems Regulator consultation – CP 23/6: APP fraud: Excess and maximum reimbursement level for FPS and CHAPS¹.

We have the following comments to put forward for consideration.

Consultation questions.

Question 1: 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?

We do not agree that a claim excess should be set, as this may impact negatively on less financially well-off consumers – regardless of whether they meet the criteria for vulnerability or not – more than affluent consumers. This has two consequences:

1. For consumers whose account balance is very low the excess – however small the amount – may prevent them from making essential payments which may impact their life significantly and may affect their credit score.
2. The excess as signal that consumers need to exercise caution will be ineffective for more affluent consumers.

Furthermore, an excess assumes that consumers have significant agency in preventing becoming a victim of APP fraud – however, APP fraud is becoming more sophisticated.

In addition, there is significant information imbalance between the payment service provider and the consumer. The PSP has multiple ways to prevent the fraud, including detecting fraud patterns across

¹ [CP23/6 APP fraud excess and maximum reimbursement levels consultation paper \(psr.org.uk\)](https://www.psr.org.uk/consultation/cp236-app-fraud-excess-and-maximum-reimbursement-levels)

payment instructions for all their customers, and current data analytics capability makes this feasible. We suggest that no excess is set to balance this imbalance.

Question 2: Are these factors the correct ones when considering the excess?

We note the four primary factors identified when considering what the excess should be, including, incentivising customer caution and influencing customer decision-making. This assumes that being the victim of fraud can be prevented, and while a consumer can be alert and do some checks such as the scams prevention advice from Take Five² (Stop, Challenge, Protect) , APP fraud is becoming more sophisticated, with over £1.2 billion stolen through in 2022, with nearly 80 per cent of APP fraud cases originating online.³ Added to this, not all consumer(s) have the cognitive skills to exercise caution, and we consider that incentivising is not an adequate measure. We also note that some cyber experts have been taken in by scams⁴.

We believe that consumers could be educated to that money from fraud is used to fund other harmful and illegal activities that impact society overall, as discussed in Fraud – The Facts 2021 – The Definitive Overview of Payment Industry Fraud⁵, which states “a recent report by the Royal United Services Institute (RUSI) think tank highlights, the links between fraud, organised crime and terrorism pose a significant and growing threat to our national security. The criminal gangs involved use the proceeds of fraud to fund other harmful and illegal activities such as human slavery or drugs trafficking, causing untold suffering and damage to our society.”

We consider that the correct factor is minimising financial loss for consumers.

Question 3: Is there anything else we should consider when setting the level for the excess?

In addition to the four primary factors, we believe that information symmetry and the PSP's technological capability to detect fraud needs to be taken into account.

² [Take Five - To Stop Fraud | To Stop Fraud \(takefive-stopfraud.org.uk\)](https://takefive-stopfraud.org.uk)

³ [Over £1.2 billion stolen through fraud in 2022, with nearly 80 per cent of APP fraud cases starting online | Insights | UK Finance](https://www.ukfinance.org.uk/insights/over-1.2-billion-stolen-through-fraud-in-2022-with-nearly-80-per-cent-of-app-fraud-cases-starting-online)

⁴ [Email scams are getting more personal – they even fool cybersecurity experts \(theconversation.com\)](https://theconversation.com/email-scams-are-getting-more-personal-they-even-fool-cybersecurity-experts)

⁵ [Fraud The Facts 2021- FINAL.pdf \(ukfinance.org.uk\)](https://www.ukfinance.org.uk/fraud-the-facts-2021-final.pdf)

Question 4: 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?

Please see our comments to question 2, and an excess should in our view not be imposed.

Question 5: Do you have any data, evidence or views to suggest how an excess should be calibrated?

We have no comments.

Question 6: Should the excess remain static? Increase with inflation? Some other metrics? Not increase at all?

We have no comments.

Question 7: Do you agree that the maximum reimbursement level should be applied to all consumers, including those who might be classed as vulnerable?

We do not agree that a maximum reimbursement level should be set. Payment service providers (PSPs) should have fraud detection and checking procedures in place that should not allow very large transactions to clear and go through until the transaction has been positively verified and confirmed by the PSP with a very high degree of certainty. If the financial risk is too large for the PSP, where does that leave the consumer?

Question 8: Are these factors the correct ones when considering the maximum reimbursement level?

We have no comments.

Question 9: Are there any other factors we should consider?

We consider that the financial impact on the consumer should be considered, as this is likely to be much more impacted.

Question 10: Do you gather any data that would show what type of cases are likely to fall outside the maximum reimbursement level?

We have no comments.

Question 11: Should the maximum reimbursement level align with the Financial Ombudsman Service going forward? Increase by inflation? Some other metrics? Not increase at all?

We have no comments.

Question 12: What factors should we consider as part of the review of a maximum reimbursement level?

We have no comments.

Questions from the Bank of England in relation to CHAPS:

Question 13: Do you agree that the current ombudsman service limit of £415,000 should be the maximum reimbursement level for APP fraud claims in CHAPS?

We have no comments.

Question 14: For CHAPS, should the maximum reimbursement level be applied to all consumers?

We have no comments.

Question 15: For CHAPS, do you gather any data that would show how many and what type of cases are likely to fall outside the maximum reimbursement level?

We have no comments.

Question 16: Should the maximum reimbursement levels for Faster Payments and CHAPS diverge now or in the future?

We have no comments.

Question 17: For CHAPS, should the maximum reimbursement level align with the ombudsman service going forward? Increase by inflation? Some other metrics? Not increase at all?

We have no comments.

Question 18: Should a limit higher than £415,000 be adopted instead for CHAPS, and if so, what level

We have no comments.

For further information, please contact:

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