

Legal & Regulatory Working Group

Payments Innovation Forum (PIF) 2024



Competition Law Notice

Meeting participants are reminded that this meeting must adhere to competition law rules and as such no confidential or commercially sensitive information must be shared directly or indirectly between competitors.

Please do not share any confidential or commercially sensitive information and please do not ask questions that could lead to other participants to sharing confidential or commercially sensitive information about their organisation.

A written agenda has been circulated in advance and all discussion must keep to the agenda.

Please read our **Competition Law Guidelines** for further information:

[Competition Law Guidelines - Payments Innovation Forum](#)

Agenda – 19 January 2024

1. PSR – APP scams reimbursement policy statement (PS23/4)
2. Updates on other legal and regulatory developments:
 - a) PSR consultation on expanding Variable Recurring Payments
 - b) PSR card-acquiring market remedies consultation
 - c) Open Banking in the UK – progress and plans
 - d) FCA work on Payment Account Access and Closures
 - e) MLRs – amendment to Regulation 35 on the treatment of domestic PEPs
 - f) EU Anti-Money Laundering Authority (AMLA)
 - g) New EU measures against money laundering
 - h) PSD3 – Current state of play

1. APP scams reimbursement policy statement

Member Resources:

[PS23/4 Fighting authorised push payment scams: final decision \(psr.org.uk\)](https://psr.org.uk/PS23/4-Fighting-authorized-push-payment-scams-final-decision)

December 2023

APP scams reimbursement policy statement

- **Policy Start Date – 7 October 2024**

- The PSR recognises that the **deadline might be challenging for CoP Group 2 PSPs** to implement the reimbursement requirement at the same time as CoP; the PSR “will continue to engage with and support Group 2 PSPs.”
- **Systems capability:** the PSR recognises that comprehensive RMSs (Reimbursement Management Systems) may not be available for all PSPs to adopt by the policy start date. The PSR expects industry to collaborate to develop the minimum RMSs it considers necessary to implement the reimbursement requirement. The PSR’s role is to facilitate these discussions and “**ensure there is a focus on compliance by the start date**”. It will be for PSPs and Pay.UK to decide the most efficient means of meeting the new requirement.
- **Development of reimbursement rules:** the PSR is directing Pay.UK to publish the final reimbursement rules by 7 June 2024, alongside operational guidance. Pay.UK acknowledges industry’s requests for clarity on the rules at the earliest opportunity; **Pay.UK will make a ‘near-final version’ available as early as possible**, to give industry sufficient clarity to prepare and Pay.UK time to make minor changes. The PSR expects industry to begin operationalising the requirement before this.

APP scams reimbursement policy statement

- **Maximum level of mandatory reimbursement set at £415,000**

- Applies to all in-scope consumers – **there are no exemptions for vulnerable consumers**, but firms are expected to “take extra steps” to ensure vulnerable customers are protected when making payments.
- Applies to all APP scams claims made over Faster Payments (including claims from vulnerable customers).
- Victims retain existing rights under the FCA Handbook to refer complaints to the Financial Ombudsman Service i.e., they can make two complaints (one to each PSP) about losses from a single payment, and these will be subject to separate ombudsman service award limits. PSPs should make victims aware of this.
- Sending PSPs are not required to (but may choose to) reimburse more than the maximum for a single APP scam case.
- The maximum cap will not automatically be indexed to inflation, or any other metric.
- The PSR may review the maximum level before the policy start date “if there is convincing evidence to do so.”
- The PSR has assessed the prudential risks to PSPs from ‘rare high-value claims’ as being low. To mitigate the risks, firms should act now to put in place robust and effective fraud prevention controls, e.g. improving KYC controls, stopping or freezing payments PSPs consider suspicious for further investigation, utilising data- and intelligence-sharing tools.

APP scams reimbursement policy statement

- **The consumer standard of caution exception** will consist of:
 - The requirement to have regard to interventions – consumers should have regard to interventions made by their sending PSP, or by a national competent authority, such as the police. Interventions must clearly communicate the PSP's and/or police assessment of the probability that an intended payment is an APP scam payment.
 - The prompt reporting requirement – as soon as a consumer learns, or suspects, they have fallen victim to an APP scam, they should report the matter promptly to their PSP and, in any event, no more than 13 months after the last relevant payment was authorised.
 - The information sharing requirement – consumers should respond to any reasonable and proportionate requests for information made by the PSP to help them assess a reimbursement claim. This includes requests under the PSP's 'stop the clock' rules.
 - The police reporting requirement – after making a reimbursement claim, consumers should, upon request by their PSP, consent to the PSP reporting to the police on the consumer's behalf, or request the consumer directly report the details of the scam to a national competent authority.
 - Where a consumer, with gross negligence, has not met one or more of the above, the PSP would not be required to reimburse a consumer who had fallen victim to an APP scam. Simply failing to meet one of the above requirements is not, in itself, sufficient reason for a PSP to refuse reimbursement; the PSP needs to look at the reason why the requirement was not met, to determine whether the consumer was grossly negligent, i.e., they have shown a significant degree of carelessness. The onus is on the PSP to prove this.
 - If a consumer is classed as vulnerable, the PSP cannot use the consumer standard of caution exception to deny reimbursement

APP scams reimbursement policy statement

- **Value of excess for Faster Payments**

- The PSR will allow sending PSPs to levy an excess up to a maximum of **£100 per claim**.
- The sending PSP can **decide whether to apply a full excess** (£100), **a lower excess, or no excess** to a reimbursable APP scam claim.
- Factors for PSPs to consider when deciding the level of excess include:
 - Ease of understanding for consumers
 - Minimising financial loss for consumers
 - The level of operational demand for PSPs (either in applying an excess or in excluding low-value claims)
 - Incentivising customer caution and influencing customer decision-making
- Because the PSR is not mandating PSPs to levy a maximum claim excess, **PSPs must not indicate in their communications to their customers that they are levying an excess because the PSR requires them to do so**. Nor can firms seek to suggest that their overall potential liability cannot be more than the amount the PSR requires them to reimburse.
- The £100 excess will not increase automatically, e.g., in line with inflation
- **Vulnerable consumers are exempt from any excess** the sending PSP chooses to apply. This is not a blanket exemption: in determining whether a consumer falls under the vulnerability exemption, PSPs should carry out a case-by-case assessment to understand how the consumer's vulnerability led to them being defrauded.

APP scams reimbursement policy statement

- **PSR assessment of the impact on payments and e-money firms**

- Prudential risks to smaller PSPs has been assessed as **low** because high-value claims are “very rare”, even among the largest PSPs – e.g., in 2022, only c.25 APP fraud cases exceeded £410,000 out of a total of more than 200,000 reported cases. Funding conditions in the sector have remained “fairly robust”; whilst this may change, “most loss-making firms continue to receive required funding”. Further, PSPs can take steps to mitigate the risks of high-value APP fraud transactions moving through their accounts – the PSR will “work with impacted firms alongside the FCA to mitigate the impact, where possible, if increased prudential risk arises”
- Impact on competition and innovation in UK payments – based on the evidence the PSR has, the risk that e.g., smaller payment firms could be forced to exit the market is assessed as **low**. While the PSR has looked at PSP’s potential future liabilities based on APP fraud sent and received by PSPs in 2022, the reimbursement regime does not take effect until October 2024, so there is scope for current APP fraud levels to “change substantially” – including for PSPs to improve their controls and manage risk.
- Costs to consumers of friction and delayed payments **are likely** if PSPs’ introduction of stronger fraud controls results in a higher number of payments being queried, delayed, or even declined. With the £100 excess, PSPs would not be liable for lower-value fraud, while consumers might face less payment friction and so associated costs would be lower.

APP scams reimbursement policy statement

- **Other potential consequences of the reimbursement requirement**

- Increase in reported APP fraud numbers – the new requirement could lead to a short-term increase in the volume of reported APP fraud, as it's a) likely that there is a material quantity of APP fraud going unreported currently, and b) greater clarity and consistency for consumers is likely to lead to an increase in the level of reported APP fraud. Conversely, allowing PSPs to impose an excess could lead to victims not reporting lower-value APP fraud losses. However, any under-reporting would be reduced by vulnerable customers still reporting as they will be exempt from the application of the excess.
- Consumer caution and moral hazard – the PSR recognises that the reimbursement could lead to an increase in payments where customers have not exercised appropriate caution in the knowledge that any losses will be fully reimbursed. The PSR believes PSPs and customers share this risk; PSPs should introduce e.g., more effective warnings when customers are making payments. The £100 excess is “easy to understand” and if “communicated well” will encourage consumers to be more careful.
- Potential exclusion of some consumers – the PSR has recognised that there is a risk that some PSPs may deem certain groups not classed as vulnerable as high risk and limit the services available to them. However, the PSR concludes that existing regulatory requirements, such as the Consumer Duty and PSPs' obligations under the Equality Act 2010, should minimise this risk.
- Migration to other payment methods – The PSR acknowledges that the requirement could lead to e.g., scammers migrating to other payment schemes, or PSPs ‘nudging’ payers away from Faster Payments. The PSR has found that these alternative channels have some existing consumer protections and notes that the Bank of England intends to introduce an equivalent reimbursement requirement for CHAPS payments.

2. Update on other legal and regulatory developments

Expanding variable recurring payments – Call for views

Member Resources:

[CP23/12: Expanding variable recurring payments - Call for views | Payment Systems Regulator \(psr.org.uk\)](https://www.psr.org.uk/CP23/12: Expanding variable recurring payments - Call for views)

Closes: 5pm on 2 February 2024

Expanding variable recurring payments – Call for views

- **Background:**

- The PSR is consulting on changes to Faster Payments to enable a phased expansion of Variable Recurring Payments (VRP); the consultation seeks views on how VRP can be rolled out and support the low-risk use cases the PSR proposes.
- VRPs are enabled through open banking and can only occur with expressed customer consent. The Competition and Markets Authority (CMA) mandated 9 UK banks to implement VRPs for payments between accounts belonging to the same person ('sweeping' VRP).
- The PSR wants to extend this to enable payments between accounts in different names ('non-sweeping' VRP) and proposes "swift action".
- There is currently no obligation on sending firms to enable VRPs for payments between accounts that are in different names. The [Strategic Working Group \(SWG\) report](#) suggested the introduction of VRPs in low-risk use cases in recognition of the potential barriers of insufficient customer protection and liability arrangements to wider scaling.
- The Variable Recurring Payments Working Group (VRPWG) has considered which low-risk use-cases could support an initial rollout, and whether any changes would be needed to functional capabilities, dispute resolution, and commercial models to support the rollout.
- [VRP Working Group \(VRPWG\) blueprint](#) has informed the PSR's proposal to initially enable payments VRPs for payments to regulated financial services, regulated utilities sectors, and local and central government, which the PSR deems to be 'low risk' use cases.

Expanding variable recurring payments – Call for views

- **VRP Working Group Blueprint (Phase 1) findings/recommendations:**

- The VRPWG Blueprint concluded that the 3 use cases would have existing consumer protections and sectoral regulation that may reduce fraud and insolvency-related risks to consumers and sending PSPs. The Blueprint also deems that existing functional capabilities are largely sufficient to enable the proposed expansion of VRPs in the 3 use cases.

- There was no consensus on the Definition of pilot, Contractual structures, Participation, Charging and Regulatory intervention

- **The PSR's Call for views contains 22 questions** covering areas including pricing, charges, costs (including any the PSR has not yet considered, such as OBL and FPS related costs), risks, incentives for PISPs/billers to invest in offering VRPs, use cases, any additional risks associated with the PSR's proposed commercial model, key benefits of VRPs for firms in the value chain, and any potential risks the PSR's proposals pose to the scalability of VRPs and open banking beyond Phase 1.

Other developments

- **Open Banking in the UK**

- JROC (Joint Regulatory Oversight Committee) has published an [update](#) on progress made since it outlined its vision for Open Banking in Apr-23, and plans to “deliver a new generation of payment products and services”
- JROC has also [published a response](#) to the Variable Recurring Payments (VRP) Working Group’s blueprint for rolling out non-sweeping VRP, i.e., payments between a customer and a business

- **FCA – Payment Accounts Access and Closures**

- Following its Sep-23 report: [UK Payments accounts: access and closures](#), the FCA is planning more work on account closures, including a **financial inclusion sprint** in Q1 2024 focused on improving consumer access to financial services.

- **MLRs – amendment to Regulation 35 on the treatment of domestic PEPs**

- The amended regulation mandates that the starting point for [risk-assessing domestic PEPs](#) is that they present “a lower level of risk than a non-domestic PEP.” If no enhanced risk factors are identified, “the extent of enhanced customer due diligence measures to be applied in relation to that customer or potential customer is less than the extent to be applied in the case of a non-domestic PEP.” [The Money Laundering and Terrorist Financing (Amendment) Regulations 2023 came into force on 10 January 2024.]

Other developments

- **PSR card-acquiring market remedies consultation**

→ The PSR [proposes to amend Specific Directions 14 to 16](#), which would involve updating the list of directed legal entities and amending the method the PSR uses to update it in future. A new mechanism would be introduced so that a person to which relevant business is transferred by a directed PSP will automatically become a PSP itself. Directed entities include e.g., SumUp, Stripe, Elavon and PayPal.

- **EU Anti-Money Laundering Authority (AMLA)**

→ In Dec-23, the EU Parliament and Council reached a [provisional agreement](#) on creating the new EU anti-money laundering authority, which is the 'centrepiece' of the EU's anti-money laundering package. AMLA will have direct and indirect supervisory powers over high-risk obliged entities in the financial services sector. The location of AMLA's seat has not yet been decided.

- **New EU measures against money laundering**

→ ECON/LIBE have reached provisional agreement with the Belgian presidency on the sixth Anti-Money Laundering Directive. This includes more power to FIUs to analyse and detect money laundering and terrorist financing cases, as well as to suspend suspicious transactions, accounts or business relationships: [Deal on new EU measures against money laundering | News | European Parliament \(europa.eu\)](#)

- **PSD3 – Current state of play**

Any questions?