

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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October 2024

By email: gc24-5@fca.org.uk

Dear Sir/Madam,

Financial Services Consumer Panel response to the Guidance Consultation on Authorised Push Payment Fraud: enabling a risk-based approach to payment processing GC 24/5

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the FCA's Guidance Consultation Paper on Authorised Push Payment Fraud: enabling a risk-based approach to payment processing.

Payments are essential to consumers, and the safety and security of those payments are critical; consumer trust and confidence in the payment systems they use help to build robust markets.

Consumers rely on payments as an essential part of their everyday lives to participate in society and must be able to trust the payments system. As we have stated in responses to previous consultations, we are very concerned about the persistence and growth in APP fraud. We believe that firms offering payment services are being trusted as guardians of the payment gateways and should be held responsible for doing so. This includes using all preventative and detective measures at their disposal, as well as reimbursing consumers for losses at the gateways-including losses due to fraud.

Enabling payment service providers (PSPs) to delay payment transactions where they have reasonable grounds to suspect fraud or dishonesty could prove useful in combatting fraud and avoiding consumer harm. For this reason, we welcome the introduction of amendments to the Payment Services Regulations (PSRs 2017) that will enable PSPs to delay making a payment transaction where they have reasonable grounds to suspect fraud or dishonesty ('payment delays legislation'). Equally, we support the introduction of specific guidance explaining how PSPs should apply the legislative changes to maximise the probability of preventing fraud and minimising the impact on legitimate payments.

As the FCA states in its consultation, it is important that the new legislation does not result in a negative impact for customers and that PSPs continue to process payments quickly and efficiently. It is important that PSPs' implementation of the legislative changes does not adversely affect consumers by causing unnecessary delays to legitimate payments and that customers continue to get fast and reliable payment services. Clear guidance is key.

Our answers to the specific questions set out in the Guidance Consultation follow below in the annex.

Overall, the Panel supports the Amendments and the Guidance. We would like to stress the importance of the guidance ensuring that customers can communicate with PSPs when a delay does occur as it is vital that they provide two-way communication channels and respond to incoming customer communications swiftly.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel

Annex

Questions on reasonable grounds threshold:

We agree with the reasonable grounds threshold set out by the FCA in the Paper.

Question on the payment delay timeframe:

We agree with the payment delay timeframe.

Questions relating to notifying relevant parties when delaying a payment:

We agree with the requirement that PSPs should inform customers of any delays, the reasons behind their decision and the information or actions that are required to make the payment order.

In addition, however, we would like to see clear stipulations setting out how PSPs will ensure that customers can *respond* to the information they are provided. It is vital that two-way communication channels are established at this point, enabling consumers to communicate and engage with their PSPs to understand more and / to provide qualifying information.

Question relating to liabilities incurred by a PSP in the event of a payment delay:

We concur with the requirement that the funds should be treated as remaining in the payer's account for interest accrual purposes until the payment order is processed and that if the payer incurs interest and charges because of the payment delay, the PSP should be liable for them and will be obliged to reimburse the payer, whether or not the payment order is ultimately made.

We understand why the provision is narrowly constructed and does not cover wider losses that customers might incur as a result of the payment delay, however we would caution that to ensure this narrow construction is fair:

- a) consumers must be equipped with the means of easily communicating with their PSPs to provide them with the requisite information they need to process a legitimate payment;
- b) PSPs must act swiftly within the 4-day period, releasing funds immediately when they have reassurance the payee is legitimate;
- c) ongoing monitoring of PSP's adherence to the guidance must be in place

Questions relating to inbound payments:

We agree with the guidance relating to inbound payments.

Other Comments

In Section 5.2-5.5 the FCA sets out how it will monitor and assess the impact of the payments delay legislation, describing how it will establish a process to monitor and evaluate its implementation by PSPs and collect data from industry on a voluntary ad hoc basis through the supervisory engagement processes.

Because of the potential for consumer harm arising from persistent payment delays, we would recommend that consumer complaints related to such delays is gathered and analysed and that PSPs be required to publish to the FCA the statistical frequency with which their inbound and outbound payments are being delayed. This information would also be useful to the FCA in understanding which PSPs are harbouring delinquent accounts, which PSPs are failing to provide accurate account information data and which PSPs (if any) are persistently and unnecessarily using the delay facility.