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Financial Conduct Authority
12 Endeavour Square
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By email: cp18-16@fca.org.uk

Dear Ms Thomas-Smith,

CP18/16 Authorised push payment fraud – extending the jurisdiction of the Financial Ombudsman Service

The Financial Services Consumer Panel welcomes the opportunity to respond to the FCA's consultation on 'Authorised push payment fraud – extending the jurisdiction of the Financial Ombudsman Service'.

The Panel supports the FCA's proposals. As a general principle, we think that consumers should be reimbursed for both authorised **and** unauthorised payment frauds, unless banks can prove customers have acted with gross negligence. The Financial Ombudsman Service (FOS) has recently set out its approach to dealing with cases of fraud and scams in relation to unauthorised payment fraud, noting that "*the increasing sophistication of scams means that the bar for gross negligence is high – it's more than just a test of whether someone was careless¹*". We think this approach should also apply to cases of authorised payment fraud, where the customer has been tricked into authorising a payment.

The Panel's responses to the questions posed are set out below.

Q1: Do you agree with the Glossary definition for APP fraud? Please explain why.

It is important that the FCA's definition covers all the following types of scams. We see problems regarding the inclusion of investment, romance or purchase scams. There may be problems in defining when the recipient of the payment was engaging in fraudulent activity.

Types of APP Scam

- **Impersonation:** Caller pretends to be from the bank or Police and the consumer is told to move their funds to protect them. A variation could involve a caller pretending to be from a broadband provider and taking control of/monitoring a consumer's computer.
- **Invoice / Conveyancing scams:** Consumer tricked into transferring money for a housing purchase or other invoice into a fraudster's account.
- **Investment:** Consumer tricked into making a payment for the purposes of investment with the investment either being fraudulent, incorrectly valued or excessively risky
- **Purchase scam:** Consumer tricked into making a payment for a product/service which may not exist or was mis-described.
- **Romance scam:** Consumer tricked into making a payment to an individual on the basis of a romantic relationship. The other individual may or may not exist. A variation of this

¹ <https://www.financial-ombudsman.org.uk/publications/ombudsman-news/145/pdf/issue145.pdf>

scam could involve the consumer being subject to blackmail over information they have previously shared.

- **Advance fee:** Consumer is tricked into making a payment to an individual/firm believing this will result in a benefit such as the receipt of money or a loan.
- **Uncleared funds:** Consumer is tricked into transferring money which has 'accidentally' been transferred or paid into their account to elsewhere. The money is then recalled or was not cleared and the consumer loses out.

Distinction between authorised and unauthorised transactions

The FCA will need to draw a clear distinction between unauthorised and authorised transactions. Some APP fraud will involve the consumer being tricked into sharing their personal security credentials with third parties. The sending bank will try and deny liability as the consumer has shared their security credentials and the consumer may not have any right of complaint against the receiving bank as that right only exists for APP fraud cases. Consumers who are tricked into sharing their security credentials (but did not authorise the specific payment) should also be entitled to redress under the PSRs. If they do not receive redress then they should have a right of complaint against the receiving bank.

Definition of complaint

It appears from Panel discussions with them that some banks do not always classify a report of an APP scam as a complaint. The FCA should clarify that a report of an APP fraud should be classified as a complaint immediately, and not just when a consumer complains that they haven't got their money back.

Across most of financial services there is a longstanding rule that firms have 8 weeks to deal with complaints before consumers have the right to take their case to ADR (the FOS). In crucial payment services, this period has recently been set much shorter, at 15 business days. This is welcome. The Panel recommends that the 15 business day timescale (with 35 business days for exceptional cases) is applied to all financial services firms. This shorter timescale would be in line with FCA Guidance under DISP that "*the respondent should aim to resolve complaints at the earliest possible opportunity*"².

Q2: Do you agree with our proposal to apply our complaints handling rules to complaints by payers against receiving PSPs about a failure to prevent alleged APP fraud, and bring these complaints into the Financial Ombudsman Service's CJ and VJ? Please explain why.

Yes. At the moment, many consumers are unable to bring a complaint against the receiving PSP. This means that consumers cannot get redress and weakens the incentive for receiving PSPs to prevent APP fraud taking place and ensure that fraudsters cannot open or utilise accounts.

APP frauds can involve mule accounts where money is transferred through multiple accounts before being withdrawn by the fraudster. It is vital that the policy change applies to each of the multiple receiving PSPs in the chain. The FCA should apply the complaints handling rules to complaints by payers against all the receiving PSPs about a failure to prevent alleged APP fraud, and bring these complaints into the FOS's jurisdiction.

Ideally, there should be a single point of contact for the customer. This should probably be the sending bank as it will be best placed to verify the identity of the customer and confirm where the payment was sent. Any reimbursement or refunds should also go via the sending bank, regardless of whether the sending or receiving bank provides the money.

² <https://www.handbook.fca.org.uk/handbook/DISP/1/4.html>

There will need to be further amendments to the DISP rules. The complaints forwarding rule should be turned on automatically (rather than it being voluntary) for all APP fraud complaints. This means that the sending bank should forward on the complaint to the receiving bank rather than the consumer having to make a separate complaint to the receiving bank. The consumer may not know the identity of the receiving PSPs and may have difficulty proving their identity.

The FCA must avoid a situation where the sending PSP sits on the complaint for up to 8 weeks and then tells the consumer they can make a complaint to the receiving bank, at which point the consumer has to explain/submit their complaint again with the receiving bank having another period of up to 8 weeks to respond.

The final response to a complaint about APP fraud should note that the customer has the right to go to the FOS about the actions of both the sending and receiving PSP. Regardless of how the consumer eventually gets there, the FOS should have the right to look at both the conduct of the sending and receiving banks.

There also needs to be further clarity about liability if both the sending and receiving PSP were at fault, and how the payment of compensation should be made. It is important that disputes between the banks should not delay compensation payments.

Q3: Do you support a wider voluntary scheme, run by the Financial Ombudsman Service, to cover complaints which are not covered by our proposals? If yes, what do you suggest such a scheme should cover?

Yes, as it is difficult to predict in advance all the types of fraud which may emerge.

Q4: Do you agree with our proposal to give effect to the requirement to bring these complaints (about a payee's PSP's cooperation with the payer's PSP to recover funds involved in a payment transaction where incorrect details have been provided) into the Financial Ombudsman Service's CJ and VJ? Please explain why.

Yes. Given the forthcoming introduction of Confirmation of Payee it is also important to ensure that complaints about incorrect details or misleading information provided through the Confirmation of Payee system by either the payer or payee PSP are within the jurisdiction of FOS.

Q5: Do you agree with the costs, benefits and transfers we have identified? If not, please explain why and provide supporting information.

Yes.

Yours sincerely,

Sue Lewis
Chair, Financial Services Consumer Panel