

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

Feedback to CP18/16 and final rules

Policy Statement

PS18/22

December 2018



This relates to

Consultation Paper 18/16 which is available on our website at: www.fca.org.uk/publications/consultation/cp18-16.pdf

Please send any comments or queries to:

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How to navigate this document onscreen



returns you to the contents list



takes you to helpful abbreviations

Contents

1	Summary	3
2	Feedback on our proposed changes and our response	7
3	Feedback on cost benefit analysis and compatibility statement	14
Annex 1		
	List of non-confidential respondents	16
Annex 2		
	Abbreviations in this document	17
Appendix 1		
	Made rules (legal instrument)	

1 Summary

- 1.1** In this policy statement (PS), we summarise and respond to feedback to Consultation Paper (CP) 18/16: Authorised push payment fraud – extending the jurisdiction of the Financial Ombudsman Service. Our changes aim to reduce the harm to victims¹ of authorised push payment (APP) fraud where they believe the receiving payment service provider (PSP)² did not do enough to prevent or respond to APP fraud.
- 1.2** An APP involves a payer – often an individual consumer or a micro-enterprise – instructing their PSP to send money from their account to another account. These payments are typically executed by the Clearing House Automated Payment System and Faster Payment Service.
- 1.3** APP fraud is where a fraudster tricks a payer into making an APP to an account controlled by that fraudster. This differs from other kinds of fraud, such as where a fraudster steals money from an account without the owner of the account knowing. In APP, the account owner authorises the payment, albeit under false pretences.
- 1.4** Our complaints handling rules did not apply to complaints against PSPs about funds they have received relating to alleged APP fraud, even though they applied to complaints against a consumer’s own PSP. This presented harm to consumers because their ability to raise a complaint was restricted.
- 1.5** In CP18/16, we proposed requiring PSPs to handle complaints about alleged fraud relating to funds they have received by APP according to the Dispute Resolution: Complaints sourcebook (DISP). We also proposed allowing eligible complainants to refer these complaints to the Financial Ombudsman Service.
- 1.6** In addition, to meet the Payment Services Directive 2 (PSD2) requirements, we consulted on extending the Financial Ombudsman Service’s compulsory jurisdiction (CJ) to include complaints by a payer about a payee’s PSP’s cooperation with the payer’s PSP to recover funds from a payment transaction where incorrect details had been provided.
- 1.7** The Financial Ombudsman Service also proposed mirroring the new requirements in its voluntary jurisdiction (VJ). We have jointly issued the PS with the Financial Ombudsman Service.

1 Where they are eligible to complain to the Financial Ombudsman Service. Details of who is an eligible complainant are set out in DISP 2.7.

2 For the purpose of this PS, the term ‘payment service provider’ includes credit unions.



Who this affects

- 1.8** This PS is relevant to:
- PSPs, including credit unions
 - eligible complainants, including consumers and micro-enterprises
 - consumer groups
 - industry representative bodies

The policy's context

APP fraud

- 1.9** In September 2016, Which? submitted a super-complaint to the PSR and the FCA about consumer safeguards for APPs, stating that there is currently insufficient protection for consumers who have been victims of APP fraud. UK Finance data show that in 2017, there were 43,875 cases of APP fraud and total losses of £236 million.
- 1.10** Currently, complaints about APP fraud against the PSP who received the funds are not subject to DISP and are outside the Financial Ombudsman Service's jurisdiction; its jurisdiction covers complaints by a payer against their own PSP.

Complaints about cooperation between PSPs

- 1.11** Under PSD2, if the account details (or other payee identification details) the payer provides are incorrect, the receiving PSP must cooperate with the payer's PSP to recover the funds involved in the transaction (as per Article 88 of PSD2, which is implemented in the UK by regulation 90(3) of the Payment Services Regulations 2017 (PSRs 2017)).
- 1.12** PSD2 also requires that disputes between payment service users and PSPs about a PSP's obligations under Titles III and IV of PSD2 can be considered by an Alternative Dispute Resolution scheme.³ Disputes between payers and receiving PSPs about the PSP's obligation under regulation 90(3) of the PSRs are not currently in the Financial Ombudsman Service's jurisdiction.

What we are changing

APP fraud

- 1.13** Part of our response to the super-complaint was in CP18/16, where we consulted on requiring PSPs to handle complaints about alleged fraud relating to APP funds in line with DISP, as well as including these complaints in the Financial Ombudsman Service's CJ and VJ.

³ Article 102 of PSD2

1.14 The PSR established a steering group of industry and consumer representatives, as well as observers from regulators, government and law enforcement, to develop a voluntary industry code: the contingent reimbursement model (CRM) code. This code aims to set standards for all PSPs resolving complaints about alleged APP fraud, and a draft was published on 28 September 2018 for consultation. When adjudicating APP fraud complaints the Financial Ombudsman Service will consider any relevant code of practice to help it decide what is fair and reasonable.

1.15 The rule changes in this paper are separate from industry initiatives. We will require receiving PSPs to consider complaints about alleged APP fraud in line with our complaints handling rules, and bring these complaints into the Financial Ombudsman Service's jurisdiction.

Complaints about cooperation between PSPs

1.16 In CP18/16, we also consulted on requiring PSPs to handle complaints from payers who transferred funds to them as a result of a misdirected payment (relevant to the PSP's obligation under regulation 90(3) of the PSRs) in line with DISP. Such complaints will also be considered under the Financial Ombudsman Service's CJ and VJ. We consulted on this to take effect when the final rules are made, but it will apply to any act or omission from the date when regulation 90(3) of the PSRs 2017 took effect – 13 January 2018.

1.17 We have decided to proceed with all our proposals as consulted on, subject to some clarifications in the final rules.

How it links to our objectives

1.18 These changes will help to protect consumers and enhance market integrity by:

- Providing standards for the fair and timely resolution of complaints, plus access to alternative dispute resolution through the Financial Ombudsman Service.
- Improving trust in the financial system and encouraging PSPs to review their APP fraud procedures to handle complaints appropriately.

Outcome we are seeking

1.19 The policy changes intend to provide victims of alleged APP fraud (where they are eligible complainants) with prompt and fair complaints resolution, and access to dispute resolution through the Financial Ombudsman Service for complaints against PSPs who receive payments relating to the alleged fraud.

1.20 The policy changes also implement PSD2 requirements by giving payers access to dispute resolution through the Financial Ombudsman Service in cases of insufficient cooperation between paying and receiving PSPs in recovering funds that were mistakenly sent to the wrong account due to the payment details being incorrect. Such cases are also called 'misdirected payments'.



Measuring success

- 1.21** In CP18/25, we consulted on requiring PSPs to record and report any complaints about APP fraud to the FCA; the outcome will be published shortly. We, the PSR, PSPs and consumers could use these data as a progress indicator and to inform our supervisory work.

Summary of feedback and our response

- 1.22** We received 19 written responses to CP 18/16, including submissions from PSPs, firms and trade bodies. Respondents were broadly supportive of the proposals, with some asking for clarifications. Some respondents did challenge the proposals. Taking this into account, we have finalised the rules as consulted on, with some minor amendments reflecting the feedback. The key issues raised by respondents and our feedback are summarised in Chapter 2. Our final rules are published in Appendix 1.

Equality and diversity considerations

- 1.23** We did not receive any comments on our assessment of equality and diversity implications as consulted on in CP18/16. Our assessment that the policy changes may result in positive and negative implications on all consumers remains unchanged. The potential harm posed by the implications we identified (eg, stricter systems and controls making it difficult for consumers to access bank accounts) is mitigated by existing rules. For example, our rules state that firms should ensure their systems include measures to prevent identification procedures from unreasonably denying new consumers access to services. Further guidance on this is in Part 1 of the Joint Money Laundering Steering Group's Guidance.

Next steps

- 1.24** The final rules requiring PSPs to handle complaints about alleged fraudulent funds they have received via APP in line with DISP, and the extension of the Financial Ombudsman Service's CJ and VJ, are in Appendix 1 and will take effect on 31 January 2019.
- 1.25** The final rules relating to the PSD2 requirements on misdirected payments are also in Appendix 1 and will take effect upon publication on 14 December 2018. They apply to complaints about acts or omissions from 13 January 2018.

2 Feedback on our proposed changes and our response

- 2.1** Here, we summarise and respond to the feedback received on the policy changes we proposed in Consultation Paper (CP) 18/16. The policy changes affect the Dispute Resolution: Complaints sourcebook (DISP) and include a new Glossary definition for authorised push payment (APP) fraud.

Question feedback

- 2.2** In CP18/16, we asked:

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

- 2.3** Most respondents agreed with the proposed Glossary definition of APP fraud. Some commented on ensuring that the definition captures the type of fraudulent push payments intended, and that it does not inadvertently capture other types of payments such as pull payments (eg, debit card payments).
- 2.4** Others commented that the definition of APP fraud should be aligned with the one in the draft contingent reimbursement model (CRM) code.
- 2.5** Some respondents said the definition should include the idea of 'consent' to distinguish APP fraud from other kinds of fraud, such as unauthorised payment fraud.

Our response

We still think our definition captures the examples of APP fraud that we outlined in paragraphs 3.12 and 3.13 of the consultation. We have, however, made minor amendments to the definition to clarify that it does not inadvertently capture payments not covered by our policy, such as credit card or direct debit payments.

We have used the term "initiated" in the revised definition of APP fraud and have stated that this word should be construed in the context of the way it is used in the PSRs (i.e. as a reference to the technical way in which a payment may be transferred). The use of the term "initiated" in the definition does not exclude frauds "initiated" by a fraudster in the sense that it is the fraudster that has tricked or deceived the person into making the transfer to them.



We have also included in the definition examples of payment methods that are caught – funds transferred by credit transfer – and those that are not – funds transferred by direct debit or credit card via a merchant.

We have split the new DISP rule into two so that it deals separately with complaints relating to alleged APP fraud and complaints related to misdirected payments, in order to improve the clarity of the drafting. Complainants can only be eligible in relation to alleged APP fraud if their complaints are not PSD complaints. As such, we have made some minor amendments to the definition and the rules we consulted on to remove references to Glossary terms which are linked to the PSRs.

We are mindful of the ongoing work on the CRM code, and we consider that our definition is not inconsistent with it.

We believe 'payer's consent' is adequately covered in the definition: '...A intended to transfer...' and '...A transferred funds...for what they believed were legitimate purposes...'. Therefore, it seems unlikely that unauthorised payments, in relation to which the payer has expressed no such intention or belief, could be captured. For example, instances in which a fraudster has gained access to personal credentials or an authorisation code, which they have then used to transfer money, would not be likely to meet the definition of APP fraud because the payer has not intended or authorised the transaction. For these reasons, we do not consider it necessary to change the definition.

2.6 In CP18/16, we asked:

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.

2.7 Most respondents viewed the proposal as a positive step for consumers and were broadly in agreement with the policy. Some respondents raised concerns.

Extension of jurisdiction

2.8 One respondent strongly opposed our proposals. In particular, the respondent stated that the FCA does not have a legal basis for extending the Financial Ombudsman Service's jurisdiction. The respondent also felt that the extension of the Financial Ombudsman Service's compulsory jurisdiction (CJ) to support a voluntary code would set a dangerous precedent.

Implementation

2.9 Some respondents expressed concern that it would take longer than between the proposed publication of the final rules in mid-November and 1 January 2019 to change their processes for compliance with the new requirements. Others felt that our APP fraud complaints proposals should only take effect when the proposed CRM code is settled.

Consumer journey

- 2.10** Some respondents raised concerns about 'consumer journeys' as a result of these policy proposals, and asked that we provide further clarity on the complaint process a consumer should follow and the role of the sending payment service provider (PSP). There was concern that a complainant may have to wait several weeks for the sending PSP to establish that the receiving PSP is involved, and for this to be communicated back to the complainant so that they can also complain to the receiving PSP. The respondents felt that a sending and a receiving PSP could delay the outcome for a complainant by passing the matter between them, which would also result in a negative experience for the consumer.

Scope

- 2.11** Some respondents noted that APP fraud often involves 'mule accounts'. These are accounts controlled by a fraudster, and money can be transferred through multiple accounts before being withdrawn by the fraudster. One respondent felt that the policy change should apply to each of the receiving PSPs in such a chain. They suggested that we apply the complaints handling rules to complaints by payers against all the receiving PSPs about a failure to prevent alleged APP fraud, and that we bring these complaints into the Financial Ombudsman Service's jurisdiction.
- 2.12** A few respondents raised concerns around allowing a complainant to complain to a party (the receiving PSP) with which they have no contractual relationship.

Proportionality for credit unions

- 2.13** We consulted on including credit unions in the types of entities that could be recipients of fraudulent APPs so that complaints can be brought against them. One respondent asked us to consider proportionality in order to avoid burdensome regulation for credit unions.

Concerns about the Proceeds of Crime Act 2002 (POCA 2002) and the General Data Protection Regulation 2016/679 (GDPR)

- 2.14** Some respondents raised questions about sharing information under various legislation, including POCA 2002 and GDPR. These respondents generally had 2 concerns:
- Doubts over the Financial Ombudsman Service's ability to deal with complaints where POCA 2002 and anti-money laundering considerations are involved.
 - Restrictions on sharing data with complainants, the Financial Ombudsman Service and other PSPs because of legal obligations and the possibility of more complaints where complainants feel under-informed.



Our response

Taking into account the concerns raised and the benefit to consumers, we are proceeding as consulted on.

Extension of jurisdiction

We found the argument questioning our legal basis for extending the Financial Ombudsman Service's jurisdiction unclear. We believe the FCA does have the legal powers to make the related rules, as proposed.

We do not agree that the extension of the Financial Ombudsman Service's CJ sets a dangerous precedent. We believe it would be appropriate for receiving PSPs to have to consider complaints of alleged APP fraud from payers, and for the Financial Ombudsman Service to have jurisdiction over these complaints. In addition, the Financial Ombudsman Service may take the CRM code into account when resolving complaints to help it decide what is fair and reasonable.

Our rules would allow victims of APP fraud to have access to dispute resolution and redress even in the absence of the CRM code.

Implementation

Currently, payers can only complain to the Financial Ombudsman Service about the sending PSP (the firm providing the payment service to the payer). In practice, many complaints relating to APP fraud will be about the receiving PSP's actions, especially the allegation that the receiving PSP has not done enough to prevent fraud. In order to address this harm, it is important that the final rules come into force without undue delay and enable consumers to make complaints.

We acknowledge respondents' concerns about there being insufficient time to implement systems and processes for compliance with the new requirements. However, we also note that all the affected firms already deal with such complaints as sending PSPs. Bearing this in mind, we have decided to make the effective date 31 January 2019, which we believe allows time for implementation and does not unduly delay payers' ability to complain about receiving PSPs⁴.

Consumer journey

In most cases, we expect that a payer/victim of APP fraud will complain to the sending PSP and that the sending PSP will involve the receiving PSP where necessary. However, our rules will require that both the sending and receiving PSPs address eligible complaints they receive.

Upon receiving a complaint, the sending PSP should decide if it can respond or if the complaint needs to be forwarded to the receiving PSP. Our rules allow for the forwarding of complaints promptly and in writing between PSPs in certain circumstances, and PSPs that receive forwarded complaints must deal with them under DISP as if they were made directly to that firm.⁵

4 If any PSP considers it will be unable to comply with the complaints handling requirements by 31 January 2019 it should discuss matters with its usual supervisory contacts.

5 DISP 1.7

We would expect the complainant to receive a redress response from either the sending or the receiving PSP (as a single response), or from both (as a joint response). We do not expect the consumer to complain to the sending PSP, wait 8 weeks for their response and then complain to the receiving PSP, then wait another 8 weeks for their response.

If the consumer is not happy with the response or has not received one, they can approach the Financial Ombudsman Service, which can determine the proportion of a complainant's award that PSPs must contribute.⁶

Initiatives like the CRM code may set out a process to help victims report APP fraud, but the CRM code is voluntary, with rules and processes that are not set by the FCA. Each PSP must deal with the complaints it receives in accordance with DISP rules.

Scope

The definition of APP fraud is clear – it broadly applies to 'a transfer of funds by a payer to a person...', where the payer is tricked into making that transfer. If multiple PSPs are involved in a transfer, we think these PSPs are covered by our rules. However, subsequent payments from the fraudster's account would not meet the definition of APP fraud, so they would fall outside the scope of our policy changes.

Proportionality for credit unions

Credit unions offering payment accounts could receive APPs and will therefore be impacted by our policy changes. Those credit unions that do not offer payment accounts will not be affected by our policy changes.

Credit unions are already subject to the DISP complaints handling rules. Proportionality is built into these rules, as some of the requirements do not apply to credit unions.⁷ We do not think credit unions offering payment accounts should be excluded from our requirements, as credit unions present the same potential harm to consumers as other PSPs. Excluding credit unions from these requirements may inadvertently encourage fraudsters to target them, exacerbating the issue.

POCA 2002 and GDPR

Payment service providers should respect relevant legislation when handling complaints. While POCA 2002 may mostly relate to APP fraud complaints, we expect PSPs to have experience of managing POCA 2002 issues in other contexts. General Data Protection Regulation 2016/679 allows data sharing to detect and prevent crime, subject to compliance.

The Financial Ombudsman Service is required in all its casework to consider relevant laws and regulations (among other things) at the time of the act or omission when deciding what is fair and reasonable in the circumstances of a complaint. It has considerable experience of deciding complaints that involve complex legal considerations

6 DISP 3.6.3G

7 See: DISP 1.1.5A R



like those highlighted by respondents. Indeed, under its existing jurisdiction, the Financial Ombudsman Service can consider consumer complaints about firms' actions when opening accounts, where 'know your customer' and anti-money laundering regulations could be relevant. It also has considerable experience of complaints where POCA 2002 is a factor. In preparation for this jurisdiction extension, the Financial Ombudsman Service will assess what additional training and expertise are needed to handle complaints and will take action where necessary.

2.15 In CP18/16, we asked:

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?

2.16 Responses were mixed on whether the Financial Ombudsman Service should run a wider voluntary scheme. Some wanted to wait for the details of a possible scheme before commenting. Some thought that the existing arrangements would provide sufficient cover.

Our response

Although some respondents supported the possibility of a wider voluntary scheme, none of them made suggestions about what complaints a further extension might cover. Therefore, the Financial Ombudsman Service will not be taking matters forward at this time.

2.17 In CP18/16, we asked:

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.

2.18 To meet Payment Services Directive 2 (PSD2) requirements, we consulted on extending the Financial Ombudsman Service's CJ and VJ to include complaints about a payee's PSP's cooperation with the payer's PSP to recover funds from a payment transaction where incorrect details were provided. We noted that this requirement would take effect immediately and apply to complaints about a payee's PSP's acts or omissions occurring on or after 13 January 2018.

2.19 Most respondents supported this proposal.

2.20 Some respondents questioned whether the rule would require firms to contact previously unsuccessful complainants – from between 13 January 2018 and the

publication of the final rules – to tell them if this change makes them newly eligible to complain.

- 2.21** Some respondents believed that a receiving PSP's failure to recover funds should not be considered a failure to cooperate with the payer's PSP.

Our response

We are proceeding with the final rules as consulted.

We do not believe there were many complaints dismissed on jurisdictional grounds between 13 January 2018 and the publication of these rules on 14 December 2018. In any event, the rules do not require firms to proactively get in touch with previously unsuccessful complainants. If a complainant makes a new complaint, or if a PSP is still handling a complaint, on or after 14 December 2018 (relating to an act or omission on or after 13 January 2018), then the PSP must handle the complaint in line with the new rules under DISP.

Pursuant to regulation 90(3) of the Payment Services Regulations 2017 (PSRs), a receiving PSP is required to cooperate with the payer's PSP in its efforts to recover the funds, particularly by providing all relevant information to the payer's PSP. This cooperation between PSPs could involve participating in industry arrangements relating to the recovery of funds (such as the credit payment recovery process). We would expect the relevant information provided to include the payee's name and an address at which documents can be effectively served to that person.⁸

When considering these complaints about cooperation between PSPs, the Financial Ombudsman Service will decide what is fair and reasonable in the circumstances of a complaint.



3 Feedback on cost benefit analysis and compatibility statement

Cost benefit analysis

- 3.1** In Consultation Paper (CP) 18/16, we set out a cost benefit analysis of our proposed rules, as required by section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA). The cost benefit analysis assessed each proposal and explained why we expect the incremental costs of the proposals to be of little significance.
- 3.2** In CP18/16, we asked:
- Q5: Do you agree with the costs, benefits and transfers we have identified? If not, please explain why.**
- 3.3** We received some comments on the cost benefit analysis. Some respondents confirmed their agreement with it.
- 3.4** However, 1 respondent argued that we overestimated the number of potential complaints since, in their view, not all cases of authorised push payment (APP) fraud generate a complaint. In their experience, only 4% of all APP fraud cases would result in a complaint.
- 3.5** One respondent argued that the cost benefit analysis did not take into account enhanced control measures for account opening, and for the potential large increase in eligible complainants.
- 3.6** One respondent highlighted that the cost benefit analysis should consider the costs and opportunity cost associated with a rise in suspicious activity reports (SARs). The respondent said this rise would be created by realisation of the benefit of receiving PSPs improving their systems and processes, as a result of PSPs working to prevent receipt of APP fraud monies. They believe this will result in additional costs to firms.

Our response

We have noted comments on the amount of APP fraud cases that could result in complaints. We estimated the number of potential complaints in our cost benefit analysis. The figures provided by UK Finance are based on the number of cases reported in 2017, as part of its annual fraud report, which we used in our calculations. We acknowledge that not every APP fraud case will generate a complaint, as consumers will be asking for assistance rather than complaining in some cases. A PSP must continue to determine if the consumer is making a complaint under the

existing definition. At present, we cannot estimate the proportion that will progress to complaints.

We expect most PSPs affected by our proposals to already be subject to Dispute Resolution: Complaints sourcebook (DISP) for handling complaints by consumers, as indicated in our cost benefit analysis. We are unable to quantify additional costs to PSPs as a result of more stringent account checks, and it is not clear that this would be a result of our rules. Payment service providers are already required to have checks in place when opening accounts. We hope our rules will incentivise compliance, though we are not changing the requirements. There are existing rules and guidance on financial inclusion. For example, firms should ensure their systems do not unreasonably deny new consumers access to services. Further guidance on this issue is in Part 1 of the Joint Money Laundering Steering Group's Guidance. Payment service providers must already balance such considerations against the checks for account opening, so these rule changes should not affect this.

We expect the costs of handling APP fraud-related complaints to be in line with complaints of a similar nature, while the benefits are considerable in terms of potentially averted fraud and improved access to redress.

Reporting suspicions of money laundering through a SAR is a law under the Proceeds of Crime Act 2002. Payment service providers should already have adequate systems and processes for this. We do not see how any cost associated with increased SARs would be a result of our new requirements, which relate to a consumer's access to redress through the increased jurisdiction of the Financial Ombudsman Service.

The changes we have made to the instrument do not significantly differ from the consultative draft. On this basis, we have not made further amendments to our cost benefit analysis as consulted on.

Compatibility statement

- 3.7** One respondent asked us to consider proportionality in order to avoid burdensome regulation for credit unions in relation to APP fraud (but not in relation to Payment Services Directive 2 (PSD2) requirements on misdirected payments).
- 3.8** Credit unions offering payment accounts could receive complaints so will be affected. Those credit unions that do not offer payment accounts will not be affected by our proposals. Credit unions are already subject to the DISP complaints handling requirements, and proportionality is already built into the rules. The impact on credit unions as a result of our rule changes is discussed in paragraph 2.12.
- 3.9** We believe the final rules in this policy statement do not require us to revise the compatibility statement.



Annex 1

List of non-confidential respondents

Barclays Bank UK PLC

Cifas

City of London Corporation Trading Standards Service

Electronic Money Association

Financial Services Consumer Panel

Fraud Advisory Panel

HSBC UK Bank PLC

Irish League of Credit Unions

Lloyds Banking Group

National Trading Standards Scams Team

Societe Generale

The Royal Bank of Scotland Group

The Building Societies Association

Transpact.com

UK Finance

University College London

Which?

Annex 2

Abbreviations in this document

APP	Authorised Push Payment
CJ	Compulsory Jurisdiction
CRM	Contingent Reimbursement Model
DISP	Dispute Resolution: Complaints sourcebook
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
GDPR	General Data Protection Regulation 2016/679
POCA 2002	Proceeds of Crime Act 2002
PS	Policy Statement
PSD2	Payment Services Directive 2
PSP	Payment Service Provider
PSR	Payment Systems Regulator
SAR	Suspicious Activity Report
VJ	Voluntary Jurisdiction

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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Appendix 1

Made rules (legal instrument)

**DISPUTE RESOLUTION: COMPLAINTS (AUTHORISED PUSH PAYMENT
FRAUD) INSTRUMENT 2018**

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes and amends the Voluntary Jurisdiction rules as set out in the Annexes to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary Jurisdiction);
 - (2) paragraph 8 (Information, advice and guidance) of Schedule 17;
 - (3) paragraph 20 (Voluntary jurisdiction rules: procedure) of Schedule 17; and
 - (4) paragraph 22 (Consultation) of Schedule 17.
- B. The Financial Ombudsman Service Limited notes that, for the avoidance of doubt, the Transitional Provisions at TP 1.1 in Annex B to this instrument apply equally to the Voluntary Jurisdiction of the Financial Ombudsman Service Limited and the Compulsory Jurisdiction.
- C. The making and amendment of the Voluntary Jurisdiction rules by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- D. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Act:
- (1) section 137A (FCA’s general rule making power);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 226 (Compulsory jurisdiction); and
 - (5) paragraph 13(4) (FCA’s rules) of Schedule 17.
- E. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- F. The Financial Conduct Authority approves the Voluntary Jurisdiction rules made and amended by the Financial Ombudsman Service Limited under this instrument.

Commencement

- G. Part 1 of Annex B comes into force on 14 December 2018. The remainder of this instrument comes into force on 31 January 2019.

Amendments to the Handbook

- H. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- I. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

Citation

- J. This instrument may be cited as the Dispute Resolution: Complaints (Authorised Push Payment Fraud) Instrument 2018.

By order of the Board of the Financial Ombudsman Service Limited
7 December 2018

By order of the Board of the Financial Conduct Authority
13 December 2018

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

Comes into force on 31 January 2019

<i>authorised push payment fraud</i>	a transfer of funds by <i>person A</i> to <i>person B</i> , other than a transfer initiated by or through <i>person B</i> , where: <ol style="list-style-type: none">(1) A intended to transfer the funds to a <i>person</i> other than B but was instead deceived into transferring the funds to B; or(2) A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent.
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In this definition, “initiated” should be construed in the context of the way it is used in the *Payment Services Regulations* (so that, for example, funds transferred by *credit transfer* would be included but not where they have been transferred by *direct debit* or debit card or credit card via a merchant).

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text.

Part 1: Comes into force on 14 December 2018

2 Jurisdiction of the Financial Ombudsman Service

...

2.7 Is the complainant eligible?

...

2.7.6 R To be an *eligible complainant* a person must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(2A) the complainant is (or was) a payer in a payment transaction in relation to which the respondent is (or was) the payee's payment service provider, provided the complaint relates to the respondent's obligations under regulation 90(3) of the Payment Services Regulations;

...

...

TP 1 Transitional provisions

1.1 Transitional provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
45	<u>DISP 2.7.6R(2A)</u>	<u>R</u>	<u>DISP 2.7.6R(2A) applies in relation to a complaint concerning an act or</u>	<u>14 December 2018</u>	<u>14 December</u>

			<u>omission which occurs on or after 13 January 2018.</u>		<u>2018</u>
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...

Part 2: Comes into force on 31 January 2019

2 Jurisdiction of the Financial Ombudsman Service

...

2.7 Is the complainant eligible?

...

2.7.6 R To be an *eligible complainant person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(2A) the complainant is (or was) a *payer* in a *payment transaction* in relation to which the *respondent* is (or was) the *payee's payment service provider*, provided the *complaint* relates to the *respondent's* obligations under regulation 90(3) of the *Payment Services Regulations*;

(2B) the complainant is a *person* that has transferred funds as a result of an alleged *authorised push payment fraud* and both:

(a) the *respondent* is (or was) involved in the transfer of the funds; and

(b) the *complaint* is not a *PSD complaint*;

...

2.7.7 G (1) *DISP 2.7.6R(5)* and *DISP 2.7.6R(6)* include, for example, employees covered by a group permanent health policy taken out by an employer, which provides in the insurance contract that the policy was taken out for the benefit of the employee.

(2) *DISP 2.7.6R(2B)* includes any *complaint* that the *respondent* did not do enough to prevent, or respond to, an alleged *authorised push payment fraud*.

...

TP 1 Transitional provisions

1.1 Transitional provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
46	<u>DISP 2.7.6R(2B)</u>	<u>R</u>	<u>DISP 2.7.6R(2B) applies in relation to a <i>complaint</i> concerning an act or omission which occurs on or after 31 January 2019.</u>	<u>31 January 2019</u>	<u>31 January 2019</u>

