

## RESPONSE TO THE FINANCIAL CONDUCT AUTHORITY CONSULTATION ON AUTHORISED PUSH PAYMENT FRAUD – EXTENDING THE JURISDICTION OF THE FINANCIAL OMBUDSMAN SERVICE PUBLISHED ON 26 JUNE 2018

The Fraud Advisory Panel welcomes the opportunity to comment on the consultation published by the Financial Conduct Authority on authorised push payment fraud – extending the jurisdiction of the Financial Ombudsman Service (CP18/16\*\*) on 26 June 2018, a copy of which is available from this [link](#).

This response of 26 September 2018 reflects consultation with the Fraud Advisory Panel's board of trustees and interested members who are counter-fraud professionals and financial crime specialists from all sectors. We are happy to discuss any aspect of our comments and to take part in all further consultations on the issue of authorised push payment fraud.

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The Fraud Advisory Panel (the 'Panel') is the UK's leading anti-fraud charity.

Established in 1998 we bring together counter fraud professionals to improve fraud resilience across society and around the world.

We provide practical support to almost 300 corporate and individual members drawn from the public, private and voluntary sectors and many different professions. All are united by a common concern about fraud and a shared determination to do something about it.

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## INTRODUCTION

1. The Fraud Advisory Panel (the 'Panel') welcomes proposals to extend the jurisdiction of the Financial Ombudsman Service (FOS) in respect of authorised push payment (APP) fraud. We were amongst the first to be consulted by the Payment Services Regulator when the consumer group *Which?* made its super complaint and have continued to express interest in this issue. We were therefore concerned that the current consultation came to our attention only by chance. In our view the regulators and APP fraud steering group should be taking a much more proactive approach to soliciting the views of all interested parties – such as the Panel – on this important issue to ensure the best possible solution is achieved. We all have a role to play in reducing APP fraud.
2. As the consultation paper sets out, consumers and businesses were defrauded of a significant amount of money in 2017, with only just over one quarter of the amount lost returned (£60.8m).<sup>1</sup> Moreover, it is unknown how many other victims simply choose not to report. Based upon the experiences of our members we are aware of a number of cases involving losses of £100,000 or more which well-exceed the reported average losses. Even if some fall outside the FOS's jurisdiction, it could be that the current statistics significantly understate the overall losses to APP fraud and therefore skew the importance of this issue. Major losses to bigger businesses also have knock-on costs for consumers and the economy as a whole.
3. Whilst we appreciate that it is impossible to prevent all fraud, it is our view that more could be done to ensure that honest consumers and businesses are protected from financial fraud and are helped to recover their losses when they do become victims. Financial services firms of all kinds should have adequate safeguards to prevent fraudsters from setting up or controlling bank accounts. They should also have better procedures to detect and take rapid action to block fraudulent accounts when a PSP is informed that a fraud may have been committed. This includes having clear signposting on their websites, telephone systems and in branch on how to report suspected fraud and fraud departments that are open 24/7.
4. We believe that there is a significant opportunity for retail banks to be at the forefront of fraud prevention by designing fraud out of their systems and innovations insofar as possible. Some options that could merit further consideration are as follows. Together these measures would undoubtedly reduce APP fraud.
  - a. For banks to validate a payee by checking the name in the payment line with the name on the account associated with the sort code and account number for transactions above a specified value.
  - b. For banks to look for links between accounts when informed of alleged frauds, even where the accounts have been opened by different individuals on whom there is no adverse information.
  - c. If money mule accounts are being used by fraudsters to facilitate APP fraud then a greater emphasis is needed on educating young customers (at the point of account opening) about the risks and consequences of allowing others to use their bank accounts in return for financial reward.

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<sup>1</sup> UK Finance (15 March 2018). *Fraud the Facts 2018: the definitive overview of payment industry fraud*. Available from <https://www.ukfinance.org.uk/wp-content/uploads/2018/07/Fraud-the-facts-Digital-version-July-2018.pdf>

- d. Finally, banks should also find ways to share intelligence and best practice to present a united front against fraudsters. Otherwise, fraudsters will simply look for the weakest link in the system.

## THE CURRENT CONSULTATION

5. Overall, we cautiously support the proposals set out in the current consultation paper to enable eligible complainants who have fallen victim to APP fraud to access dispute resolution through the FOS and to also bring certain complaints about cooperation between PSPs into its jurisdiction.
6. However the detail of how these proposals will actually work in practice is crucially important, and we do not know yet what the contingent reimbursement model will look like in its proposed final form. We look forward to responding to the forthcoming consultation on the code, but also point out that it may alter our views expressed herein.
7. We are concerned that victims will not always have access to all the information needed to complain to the FOS about potential failings by a receiving PSP in preventing or responding to an APP fraud, and this may make it harder for them to bring a successful claim. We are also concerned about how no-fault scenarios (whereby both the victim and PSP have taken appropriate precautions) will be handled.
8. Our members (many of whom act on behalf of fraud victims) have found that receiving PSPs are often reluctant to voluntarily disclose information relating to a fraud, a fraudulent account and/or their anti-financial crime controls. This disadvantages victims from seeking urgent recovery options or complaining to the FOS and is an inadequate response to what many consider to be a growing fraud threat.
9. We note that the current proposals are aimed at consumers and micro-enterprises (including trusts and charities).<sup>2</sup> We fully support this approach but ask whether further action is planned to deal with cases involving larger businesses, charities and trusts? Regulated firms' obligations on financial crime are not limited to their retail activities and all customers should have protection against being defrauded through a firm.

## RESPONSES TO SPECIFIC QUESTIONS

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

10. Yes, on the basis that the term 'person' covers both individuals and legal entities. The definition of APP fraud (where a payer instructs their PSP to send money from their account to another account controlled by a fraudster) should be broad enough in scope to cover impersonation and purchase APP fraud as described in paragraphs 3.12 and 3.13 of the consultation paper. We do not propose any amendments to the draft wording of these definitions as set out in Appendix A to the consultation.

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<sup>2</sup> Paragraph 1.2 of the current consultation paper.

11. However, clause 2 of the proposed definition may benefit from supplementary guidance on the FOS website to explain the difference between a disputed transaction and a fraudulent one – much like which already exists for the Consumer Credit Act 1974 (ss. 75 and 75a) – and illustrative case study examples.
  
- 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.**
12. In principle we support the proposals to require receiving PSPs in alleged APP frauds to handle complaints in line with the DISP sourcebook complaint handling rules and to allow eligible complainants to refer their complaints to the FOS if they are unhappy with the outcome reached by the receiving PSP or if they have not received a response at all.
13. However, we query how this will work in practice and whether the FOS will be sufficiently resourced (both staff and money) to handle such complaints in a timely manner. We also question how effective the FOS will be in challenging PSPs about possible failings in financial crime compliance matters and to place sufficient onus on them to reimburse victims under the contingent reimbursement model.
  
- 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?**
14. No comment.
  
- 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.**
15. In principle, yes. We agree that complaints about cooperation between PSPs in relation to APP fraud should be brought into the FOS’s jurisdiction in line with the Payment Services Directive 2.
  
- Q5. Do you agree with the costs, benefits and transfers we have identified? If not, please explain why.**
16. Until the detail of the proposed contingent reimbursement model is known we are unable to fully assess the potential costs and benefits associated with these changes.
17. However, it is difficult to see how PSPs with particularly robust financial crime and anti-money laundering safeguards already in place would experience a notable increase in the volume of complaints made against them (unless there is a surge in vexatious claims).

18. In our experience genuine victims of APP fraud often feel unsupported and frustrated by the financial services sector. It is hoped that these proposals will incentivise PSPs to improve their complaint handling processes to reduce the likelihood of complaints being referred to the FOS.
19. We also hope that there will be an additional benefit whereby PSPs are more willing to constructively engage and share information with each other as well as with regulated private sector professionals (trusted intermediaries) acting on behalf of victims wanting to trace and recover money lost where this is not possible via the PSPs themselves. We understand that the Information Commissioner's Office has been consulted on this and there appears to be no legal reason why such data sharing cannot occur under data protection legislation. On the contrary, data sharing to prevent and detect current and future fraud should be encouraged. Facilitating the acquisition and disclosure of information to the private sector for use in civil proceedings against fraudsters will reduce the heavy burden on both the police and criminal justice system. We, therefore, encourage the FCA to open a dialogue with the banks and other interested parties (like us) about data-sharing.
20. We recognise that the current proposals may result in PSPs increasing their security measures in order to prevent APP fraud, which may include making it more difficult for some people to open and operate a bank account. We believe that these measures are justified so long as they are reasonable, proportionate and mitigated by existing rules and guidance on financial inclusion. With fraud and cybercrime now the most prolific UK crimes, consumers and businesses will hopefully feel reassured that their financial institutions take their safety seriously and have appropriate safeguards to protect them from these crimes.