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Policy
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5th June 2017

Dear Sir/Madam

Financial Conduct Authority consultation on Implementation of the Revised Payment Services Directive (PSD2)

Which? welcomes the opportunity to respond to the Financial Conduct Authority's (FCA) consultation on the implementation of the revised Payment Services Directive (PSD2). The third-party services that PSD2 will enable could bring significant benefits to consumers, potentially beyond payment services markets. However, these new providers and the new services they provide also raise consumer protection risks, and so we strongly support the FCA's intention to closely monitor complaints about these newly-regulated services, particularly in the early stages of the market's development.

In 2016, Which? submitted a super-complaint to the Payment Systems Regulator (PSR) on the subject of authorised push payment fraud. PSD2 requires payment service providers (PSPs) to record and report provide statistical data on fraud relating to different means of payments, and we are aware that many firms currently collect data on fraud relating to unauthorised transactions. In its response to our super-complaint, the PSR found that data available on the scale and types of authorised push payment fraud is of poor quality, but it identified evidence to suggest that the scale of the problem may be significant, and concluded that the prevalence of these scams is likely to increase.

We are therefore very pleased that the FCA proposes to collect data on authorised push payment fraud, and includes the "manipulation of the payer to issue a payment order" within its guidance on the fraud types that payment service providers will need to collect data on. This is essential for oversight of the progress made on the issues raised in our super-complaint, and understanding trends in the ways that consumers lose money to fraud.

Under the Payment Services Regulations 2017 (PSRs 2017), the requirements for dealing with misdirected payments have been extended. The FCA is right to note that if consumers are increasingly making transactions from online accounts there is an increased risk that the incorrect payment routing information is provided. Where payment is made to the wrong recipient, the firm must already make reasonable efforts to recover the sums involved. However, should these efforts not succeed in recovering money lost, the additional requirements on PSPs to co-operate and provide information to customers, should make it easier for people to get all the available information they need to make a claim for repayment. The FCA's intention to extend these provisions to circumstance where the PSRs

2017 do not apply, by adding rules and guidance in the Banking Conduct of Business Sourcebook (BCOBS), is welcome. However, confirmation of payee is likely to have a far greater impact in preventing the misdirection of funds in the first place, whether by accident or through fraudulent activity, and the FCA should ensure that it is introduced across the payments industry as soon as possible. This is particularly important given the forthcoming changes to account numbers and sort codes for some consumers and business on account of ring-fencing, which could lead to fraudsters exploiting confusion over the changes to encourage consumers to inadvertently misdirect payments.

We welcome the FCA's proposed amendments to BCOBS to align with the PSRs 2017, such as reducing the maximum limit that a consumer is liable for in respect of an unauthorised transaction to £35. The FCA is right to require firms to consider explicitly the risk of fraud involved in allowing customers to make electronic payments, and have appropriate procedures and safeguards in place to ensure payments can be carried out in a safe and secure manner.

We are, however, concerned at the proposal to provide less protection for customers of PSPs outside the scope of the PSRs 2017 (such as credit unions), by *not* making these PSPs liable for losses from unauthorised transactions if they have not introduced Strong Customer Authentication. The consultation claims that this is because it would "impose disproportionate regulatory burden on [those] firms", but this statement is made without supporting evidence.

The FCA should reconsider this proposal. The bar for a 'disproportionate regulatory burden' relating to customer protection is high: customers who suffer losses because of a PSP's failure to introduce effective protections should not be disadvantaged simply because of the type of PSP they have used, and it is difficult to see a justification for some PSPs to face weaker regulatory incentives than others to protect customers. Such a measure may also mean fraudsters target those PSPs' accounts more, in the knowledge that they may be less protected. We would welcome the opportunity to understand the FCA's rationale for this proposal, and discuss our concerns further.

Yours sincerely

Caroline Normand
Director of Policy