



Which?, 2 Marylebone Road, London, NW1 4DF

Date: 26 September 2018

Response to: FCA consultation on 'Authorised push payment fraud – extending the jurisdiction of the Financial Ombudsman Service'

Consultation Response

Financial Conduct Authority consultation on 'Authorised push payment fraud – extending the jurisdiction of the Financial Ombudsman Service'

Which? welcomes the Financial Conduct Authority's (FCA) consultation on authorised push payment (APP) fraud, and we support the FCA's two main proposals:

- to require receiving banks¹ to follow the FCA's complaints handling rules; and
- to enable consumers to appeal to the Financial Ombudsman Service (FOS) if they are not happy with how their complaint is handled.

These proposals are important for two key reasons. First, the proposals will help to ensure victims of APP fraud are able to seek redress. As we argued in our 2016 super-complaint to the Payment Systems Regulator (PSR), receiving banks are particularly important for mitigating the risks of APP scams. Fraudsters directly, or indirectly, use accounts with them. Part of the reason it is currently difficult for consumers to seek redress is that receiving banks are not covered by either the FCA's complaint-handling rules or FOS jurisdiction. Indeed, of the £145.4m lost due to APP fraud in the first half of 2018, banks returned just over a fifth (£30.9m) of this to consumers and businesses.²

Combined with the PSR's proposed contingent reimbursement model code, which will apply to banks who have sent or received funds when resolving complaints about alleged APP fraud, this has the potential to significantly improve the system of redress. Which? is represented on the steering group for the new code, and we look forward to seeing the group's final proposals.

Second, the FCA's proposals have the potential to improve the incentives on receiving banks to mitigate the risk of APP scams. Receiving banks (and payee banks) currently lack incentives to address APP scams, as there are significant externalities. For example, if a bank takes steps to guard against its customers being scammers, the customers of other banks are most likely to benefit. The PSR reached a similar conclusion in its response to our super-complaint. The PSR also found that receiving banks had been inconsistent in the measures they had put in place to mitigate APP fraud.³

To ensure the new measures lead to better outcomes for consumers, in terms of both redress for victims of APP fraud and reducing the likelihood of APP fraud, Which? recommends:

- **The FCA and FOS should ensure consumers only have to make a single complaint to their bank, and a single appeal to the FOS if they are not happy with how their initial complaint has been handled.** Consumers should not be expected to understand each bank's role in the push payment, and how this relates to what they are required to do. So consumers should not be required to

¹ We use the term 'banks' for the purposes of this submission in place of payment service providers (PSPs)

² UK Finance (2018), *Criminals steal £500m through fraud and scams in the first half of 2018*

³ Payment Systems Regulator (2016), *Which? push payments super-complaint: PSR response*, p.5

determine which bank to make their initial complaint against, nor should they have to resubmit their complaint. The FCA should therefore make clear there will be a single deadline for dealing with complaints that applies to both payee and receiving banks from the point when the initial complaint is made. Similarly there should be a single deadline for the FOS to consider any complaint.

- **The FCA should make clear that when a consumer reports an APP fraud banks should automatically count this as a complaint.** This is in line with the FCA's definition of a complaint as 'any oral or written expression of dissatisfaction, whether justified or not'. This would mean that the time periods for resolving complaints are always triggered as soon as a consumer reports an APP fraud, and consumers are not required to wait for an initial response to then have to submit a complaint.

The FCA should also amend its proposed definition of APP fraud to make clear that, unlike with unauthorised payment fraud, APP fraud involves the consumer *consenting* to the bank transfer. The proposed definition only states that the payer *intended* to transfer funds. We therefore suggest that the proposed definition is amended as follows:

a transfer of funds by a payer to a person where [the payer consented to the transfer and]: (1) the payer intended to transfer the funds to a certain person but was instead deceived into transferring the funds to a different person; or (2) the payer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

With regards to the other FCA proposals, Which? agrees that the FOS should look to further extend its jurisdiction to cover complaints not covered by these proposals. This should be part of the continual evolution of the FOS' jurisdiction to ensure it keeps pace with consumer behaviour and the methods used by fraudsters. We also agree that firms should be required to report on the number of complaints regarding APP scams, as well as for other types of fraud. We look forward to seeing the FCA's proposals on this later this year.

About Which?

Which? is the largest consumer organisation in the UK with more than 1.3 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers. We are funded solely by our commercial ventures and receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

**For more information, contact Alastair Reed, senior policy adviser
alastair.reed@which.co.uk**

September 2018