

Harriett Baldwin MP
Chair of the Treasury Committee

By email

6 January 2023

from **Abby Thomas**
Chief Executive and
Chief Ombudsman

write to **Financial Ombudsman Service**
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Dear Harriett Baldwin,

Treasury Sub-Committee Hearing, 13 December 2022

During my attendance at the Treasury Sub-Committee on 13 December 2022, I said I would write to clarify the Financial Ombudsman Service's position regarding complaints from fraud victims who have made 'on-us' payments following any new rules that come into force on Authorised Push Payment (**APP**) fraud as a result of the recent consultation by the Payment Systems Regulator (**PSR**).

For completeness, 'on-us' payments are where the sending and receiving Payment Service Providers (**PSPs**) are part of the same group. The PSR explained in its consultation that its powers do not extend to regulating 'on-us' payments, as these payments are not transferred via a payment system designated under the Financial Services (Banking Reform) Act 2013. This means 'on-us' payments are not caught directly by the PSR's proposed rule changes regarding mandatory reimbursement for innocent victims of fraud.

In clarifying our position on this matter, it is important to note that the consultation has only recently concluded, so the PSR's proposals on mandatory reimbursement may change after feedback. My response is therefore predicated on the proposed rule changes actually coming into force.

Will complaints about 'on-us' APP scam payments fall within the jurisdiction of the Financial Ombudsman Service?

A payment where the sending and receiving PSPs are one and the same, or part of the same group, is a 'payment service' falling within our jurisdiction.

Under the rules which determine our jurisdiction—notably DISP Rules 2.3.1(1A) and 2.3.2A(1) of the [Financial Conduct Authority Handbook](#)—the Financial Ombudsman Service can consider a complaint under our Compulsory Jurisdiction if it relates to an act or omission by any FCA-regulated 'firm' or PSP in carrying out 'payment services' activities.

Complaints about 'on-us' APP scam payments would therefore fall under the jurisdiction of the Financial Ombudsman Service even though they currently fall outside the scope of the PSR's regulatory powers.

Could a fraud victim obtain compensation through a complaint to the Financial Ombudsman Service for an 'on-us' payment?

Our ombudsmen are required to decide cases based on what they think is fair and reasonable in all the circumstances of the complaint. When doing so, they are required to take into

account relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and what they consider to have been good industry practice at the relevant time.

PSPs have a number of requirements today to help protect their customers from falling victim to fraud in certain circumstances — including from 'on-us' payments. And, of course, a number of PSPs are signatories to the Contingent Reimbursement Model (**CRM**), meaning additional protection for customers of those banks.

In its consultation, the PSR has set out a clear expectation that PSPs will reimburse victims of on-us APP fraud in the future. It said:

We have a clear expectation that PSPs should reimburse on-us APP scam payments in the same way as payments made via Faster Payments. Victims are impacted in the same way whether the scam payment is on-us or via Faster Payments. They should not have less right to reimbursement if the fraudster uses an account provided by the victim's own PSP. If necessary, the PSR and FCA may consider what further complementary guidance or rules may be required.

Should the PSR's expectations remain the same, reimbursement of on-us APP fraud is likely to represent good industry practice (unless one of the exceptions has been met, e.g. consumer complicity or gross negligence). Accordingly, we would take that regulatory guidance and/or good industry practice into account when deciding what is fair and reasonable in all the circumstances of a particular complaint. We would also expect PSPs to take that into account when responding to complaints, thus avoiding unnecessary referrals to us.

Similarly, if the PSR and FCA issue further guidance or rules, we would also take those into account (and expect firms to do likewise when responding to complaints).

We believe this would bring a more consistent and overall enhanced approach to protection than the one that exists for victims of fraud today.

I trust this clarifies our position regarding on-us payments and our jurisdiction. If the Committee has any further questions, please do not hesitate to get in contact with me.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Abby Thomas', with a long horizontal line extending from the bottom of the signature.

Abby Thomas
Chief Executive and Chief Ombudsman