

Harriett Baldwin MP
Chair of the Treasury Committee

from

Abby Thomas
Chief Executive and
Chief Ombudsman

By email

write to

Financial Ombudsman Service
Exchange Tower
London
E14 9SR

9 February 2023

phone

020 7964 1000

fax

020 7964 1001

dx

141280 Isle of Dogs 3

Dear Ms Baldwin,

Re: Authorised Push Payment Fraud

Thank you for your letter of 25 January 2023 following the evidence I gave to the Treasury Sub-Committee on Financial Services Regulations on 13 December 2022.

You have asked five related questions about the Financial Ombudsman Service (**FOS**) and our role in connection with the consultation by the Payment Systems Regulator (**PSR**) on Authorised Push Payment (**APP**) scams. Please find our answers below:

- 1. The PSR's proposals require payment service providers (PSPs) to reimburse victims of APP fraud within two days, subject to certain exceptions. The median time taken by the FOS to resolve a case in 2021/22 was 6.4 months.¹ Is the FOS's current process appropriate for providing a swift resolution to disputes about APP fraud reimbursement?**

Our key strategic focus is to reduce waiting times for all the complainants and firms that use our service. As a result of the steps we have recently taken (see Question 2 below), we have reduced the median waiting time from the 6.4 months reported last year to just 3.7 months in Q3 of 2022/23. Our ultimate aim over the next two years is to get cases on an investigator's desk within a couple of days of referral; and most of those resolved in a matter of weeks.

It is also important to note the distinction between a *claim* for reimbursement—to which the proposed 48-hour time period will apply—and the investigation of a *complaint* about a firm's rejection of that claim. A complaint ultimately referred to us must, for reasons of natural justice, give both parties a fair opportunity to present evidence, and to respond to representations and/or the initial findings of our investigators. Such a process will inevitably take more time.

Our process is, nevertheless, fit for the swift resolution of such disputes. If a complainant who is accused of gross negligence or fraud is ultimately exonerated through our procedures, they will usually receive interest on their financial losses plus additional compensation for any distress, inconvenience or damage to reputation. It is a fair, reasonable and appropriate process for such disputes.

Lastly, it is not yet certain whether the general target of two days in the PSR's consultation will carry over to the final scheme rules. However, if it does, it is important to bear in mind that FOS only deals with disputes which the parties cannot themselves resolve. That will probably only be a small proportion of all disputed transactions after implementation. Our uphold rate for fraud and scams—without a mandatory reimbursement scheme—is currently high. But our average

¹ Financial Ombudsman Service, Annual Report and Accounts for the year ended March 2022, 21 November 2022, page 13.

uphold rate across all regulated activities is about 35%, in line with most ombudsman schemes. Therefore, we expect our uphold rate for APP scams to reduce under mandatory reimbursement, especially after the scheme has bedded-in and firms have had a chance to learn from our decisions on issues such as gross negligence or customer complicity. In other words, the proportion of customers with meritorious complaints who may have to wait more than the PSR's consultation target is likely to be relatively small.

2. What steps will you take to improve resolution times, and over what timetable?

Our ultimate aim over the next two years is to have *all* cases allocated to an investigator within a couple of days; and *most* cases—i.e. save for those caught by external factors beyond our control (e.g. litigation)—to be resolved within 6 to 12 weeks. We have already taken a number of steps towards this, including:

- Expanding our customer-call hub for initial enquiries and triage so that specialist investigators can focus solely on investigating and answering complaints;
- Introducing Digital Portal for firms and complainants. The firms' portal is live in Beta with encouraging early results. We plan to roll out the Portal progressively in 2023/24 for firms and complainants. This will be done in a careful, controlled way to mitigate data-security risks and ensure the new functionality—which includes self-monitoring case progression and directly uploading confidential evidence—is delivered safely;
- Improving our case-handling system continually, including upgrading our electronic casefile system so that it is quicker and easier to use;
- Introducing intelligent automation, which classifies our cases faster and more accurately, thereby improving our efficiency;
- Utilising shorter, more concise outcome letters that help the parties focus on the real issues and reduce the number of cases that require an ombudsman's decision;
- Innovative initiatives, such as firms being incentivised (by our publishing no change in outcome) to re-review and make offers on cases when our initial triage and data-intelligence indicate they are likely to be upheld; and
- Moving towards a new casework model that aligns more closely with defined industry sectors in order to obtain economies of scale and better senior-level engagement.

Alongside these, we have also refreshed our quality assurance framework to ensure the quality of outcomes remains high. As set out under Question 1 above, these steps have already significantly reduced our median resolution times, albeit we accept there is still more to do.

Of course, a case may well take longer than our target median if a complainant (or firm) challenges the investigator's initial outcome and requires an ombudsman's review and formal determination. However, the overturn rate for cases that do escalate to an ombudsman is very low at about 7% — and that includes 'technical' overturns, e.g. the same outcome but for slightly different reasons or a modified award for matters such as distress or inconvenience.

As the PSR has explained, its proposals will increase existing consumer protections and those situations when firms should reimburse; and will effectively provide a single test for determining reimbursement in many fraud cases. This should both reduce the number of APP fraud complaints and also the breadth of issues to be considered in any complaint investigation, providing further opportunities for us to improve resolution times on APP fraud complaints.

3. Are you concerned that slow resolution of reimbursement disputes by the FOS could undermine the effectiveness of the PSR's proposals?

We recognise the risk of this but are confident that the effectiveness of the proposals will turn on clear rules, proper application by firms, and good oversight by the regulator. Our role and insight can help regulators and firms comply with the rules and principles behind the

consultation. However, we are only one part of the overall process. We engage with firms and give feedback in many ways, including through our decision-making. Our experience of the Contingent Reimbursement Model (**CRM**) is that its effectiveness turns on the application of it by firms — and we engaged quickly and consistently with firms to improve that.

If the scheme is applied by firms as the PSR intends, complaints should only constitute a small and discrete part of the overall process of fighting fraud and preventing consumer detriment. Under the proposals, most victims should be swiftly reimbursed as of right without the need to complain. The system should not be undermined by the fact that some people end up having to participate in alternative dispute resolution, which inevitably takes longer (see above) — but which also includes mechanisms to redress any harm caused by delay, i.e. interest plus compensation for distress or inconvenience.

4. Are you concerned that PSPs could use delays in the time taken for the FOS to resolve a dispute to pressure victims into accepting only partial reimbursement?

There is no persuasive evidence that this will occur in the context of fraud and scams. We are not aware of any correlation between the time taken by FOS to resolve complaints and firms making partial reimbursement offers. On the contrary, the fact that complainants can refer cases to us encourages firms to comply — and we are seeing falling uphold rates as firms seek to apply the learning from our decisions and engagement.

Firms also have regulatory obligations (plus the incoming Consumer Duty) to treat customers fairly and provide good outcomes, including in their post-service care — so, ultimately, this would be a matter for the regulator. And existing rules in the DISP section of the *Financial Conduct Authority Handbook* require firms to provide referral rights to FOS using prescribed words when responding to complaints.

There are some circumstances where it might be appropriate for a firm to provide partial reimbursement *under the existing reimbursement framework* — but we are not aware of deliberate misuse or evidence of any link to case-handling times.

5. Should APP fraud reimbursement cases be processed differently to other FOS disputes?

We already have teams that specialise in APP fraud and scam cases — plus others which focus on ‘unauthorised’ payments, on payments covered by the CRM, and on other types of fraud involving plastic cards or online investment platforms. If the consultation scheme is implemented, our new Banking Directorate plans to set up a dedicated team to fast-track cases about mandatory-scheme claims that are rejected due to allegations of gross negligence or complicity, or where there is a dispute over the amount of redress. Our usual ‘fair and reasonable’ framework will apply to these cases, but complaints are likely to produce similar issues, so this potentially provides opportunities for us to streamline case-handling processes in this area of our work.

I trust the above fully answers your questions and gives you reassurance about the suitability of the Financial Ombudsman Service for dealing with APP fraud cases under a mandatory reimbursement scheme.

Yours sincerely,



Abby Thomas
Chief Executive and Chief Ombudsman