

Will Collins – Written evidence (SCG0040)

1. INTRODUCTION

- 1.1. This submission focuses specifically on investment fraud, and the links it has to the FCA and PRA's secondary objective of competitiveness and growth. Having been a victim of investment fraud, I now help other victims access their rights, disrupt investment fraud where I see it hiding in plain sight and work as a researcher and investigator into investment fraud.
- 1.2. FCA authorised firms, including those who are part of the payment services industry, have a regulatory duty to counter the risk they might be used to further financial crime. Failure to manage this risk effectively not only breaches FCA rules but also increases the risk to society of crime and terrorism.
- 1.3. In 2012 the Financial Services Authority produced a report titled '*Banks' defences against Investment Fraud - Detecting perpetrators and protecting victims*'.¹ The evidence and experience of consumers suggests that little has changed. The report is an easy, if uncomfortable, read.
- 1.4. In their Annual Fraud Report 2024², UK Finance puts annual investment fraud losses for UK consumers at £107.8m, the '*Lowest loss total ever recorded*'. The Payments Systems Regulator (PSR) has reported an even lower figure of £80m³. By comparison, the Australian Consumer and Competition Commission (a government body) reported investment fraud in Australia in 2023 to be AUD 1.3bn⁴. (Both the population and GDP of Australia are approximately half that of the UK, and unlike the UK, Australia is not considered a global fraud hotspot⁵.)
- 1.5. It is all but impossible find an expert, outside of the banking and payments industry, who estimate that UK consumer losses to investment fraud are anything less £2bn per annum. A member of Operation Broadway⁶ recently informally described this estimate as 'laughably low'. While it is difficult to access more recent statistics, in 2014 losses from investment fraud reported to Action Fraud were more than £1.73bn.⁷

¹ [Financial Services Authority Banks' defences against investment fraud Detecting perpetrators and protecting victims June 2012](#)

² [UK Finance Annual Fraud Report 2024](#)

³ [PSR LinkedIn Post '£80 million was lost to investment scams last year'](#)

⁴ [Australians lost \\$2.7 billion to scams in 2023, ACCC report reveals](#)

⁵ [UK becoming a global hotspot for online fraud](#)

⁶ [Operation Broadway receives national attention](#)

⁷ [Operation Broadway - multi-agency drive to stop investment fraud in the Capital](#)

- 1.6. Despite their recent LinkedIn post, even PSR concedes in a policy statement that *'the real figures are likely to be higher'*.⁸
- 1.7. Why then does the banking and payments industry report that their customers lose only something like 5% of the likely actual losses from investment fraud?

2. **THE CONTINGENT REIMBURSEMENT MODEL (CRM) CODE (THE 'CODE')⁹ AND MANDATROY REIMBURSEMENT (MR)¹⁰**

- 2.1. Investment fraud is a type of Authorised Push Payment (APP) Scam. There are two definitions of APP Scam that are relevant for this discussion:
 - i The Code: *'The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent'*.
 - ii MR: *'Where a person uses a fraudulent or dishonest act or course of conduct to manipulate, deceive or persuade a consumer into transferring funds from the consumer's relevant account to a relevant account not controlled by the consumer, where... the payment is not for the purpose the consumer intended'*.
- 2.2. Under both the Code and MR, where the customer of a bank or payment services company (the 'firm') has been a victim of an APP scam, the firm should reimburse them.
- 2.3. The genesis of the Code goes back to the 2016 super-complaint made by the Consumers' Association to the PSR¹¹. The super-complaint argues that:
 - i *'The risks that authorised push payments are being made to scammers are not allocated to those best placed to manage them.'*
 - ii *'Banks are typically much better placed than consumers to guard against the risks of such payments being made.'*
 - iii *'The conduct of banks could change so reducing the extent to which scammers can fraudulently obtain funds through authorised bank push payment.'* (My underlining.)

⁸ [PSR Policy statement - Fighting authorised push payment fraud: a new reimbursement requirement Response to September 2022 consultation \(CP22/4\)](#)

⁹ [Contingent Reimbursement Model Code for Authorised Push Payment Scams 8 February 2023](#)

¹⁰ [Groundbreaking new protections for victims of APP scams start today](#)

¹¹ [Which? super-complaint Consumer safeguards in the market for push payments](#)

- 2.4. MR has replaced the Code in that it governs payments that were made after 07-Oct-2024. The Code is still applicable to payments made before this date.
- 2.5. The Code and MR are about creating a commercial incentive for banks to take their regulatory responsibilities in relation to financial crime seriously, and to provide consumers with the protection require and deserve.

3. CONFLICT-OF-INTEREST

- 3.1. Banks have a fundamental conflict-of-interest in relation to the Code and MR.
- 3.2. When a customer makes a genuine request to their bank to be reimbursed for a loss they incurred as a victim of an investment fraud, the bank has two options:
 - i **Option One:** Bank confirms that customer is a victim of fraud = Bank reimburses customer and bank incurs loss.
 - ii **Option Two:** Bank denies fraud and labels it as a 'civil dispute' = Bank does not reimburse customer and customer incurs loss.
- 3.3. Categorising investment fraud as a 'civil dispute' is the now default position of banks under the Code and is expected to become the default position of all firms under MR. I refer to this strategy of the banks as 'plausible deniability'.
- 3.4. The issue of plausible deniability is so prevalent that the PSR have consulted on, and then published about, the identification of APP scams and civil disputes.¹²

4. DISPUTE RESOLUTION – VICTIM REPRESENTATION – ROLE OF THE FINANCIAL OMBUDSMAN SERVICE (FOS)

- 4.1. *'FOS was set up by Parliament under the Financial Services and Markets Act 2000 to resolve individual complaints between financial businesses and their customers – fairly and reasonably, quickly, and with minimal formality'*¹³.
- 4.2. Prior to the launch of the Code, the PSR stated that *'there is the potential for parties to disagree about the outcome of a case. The model will need a dispute resolution mechanism to address these*

¹² [PSR Policy statement - Supporting the identification of APP scams and civil disputes September 2024](#)

¹³ [LSB Review of the CRM Code for Authorised Push Payment Scams - FOS response](#)

*disagreements.*¹⁴ To the best of my knowledge, no such dispute resolution process was ever implemented.

- 4.3. This means that, when a bank employs the strategy of plausible deniability in response to a request for reimbursement under the Code (or MR), the consumers only realistic route to accessing rights is to complain to FOS.
- 4.4. However, from my personal experience, and from what I have heard and seen from other victims' groups, I believe that FOS is either unwilling, or unable, to resolve the complaints about investment fraud in the way they obliged to.
- 4.5. Initially it appeared that FOS was unwilling or unable to properly investigate these complaints and would only seriously consider them when complainants provided a comprehensive portfolio of evidence (an almost impossible burden).
- 4.6. Now, in a recent provisional decision by FOS, the Ombudsman has relied on DISP 3.3.4(A)(5) not to reach a decision either way in relation to a complaint about an investment fraud.¹⁵ The rule says that *'The Ombudsman may dismiss a complaint referred to the FOS... without considering its merits if the Ombudsman considers that: (5) dealing with such a type of complaint would otherwise seriously impair the effective operation of the FOS'*.¹⁶
- 4.7. This provisional decision appears to link to paragraph 3.26 of the Call for Input, Modernising the Redress System recently published by the FCA and FOS.¹⁷

5. LETTER FROM THE CHANCELLOR OF THE EXCHEQUER TO THE CEO OF THE FCA AND MD OF THE PSR

- 5.1. On 14-Nov-2024, the Chancellor of the Exchequer wrote to the chief executive of the FCA and the managing director of the PSR.¹⁸ In her letter the Chancellor set out how *'growth is the defining mission of this government'*.
- 5.2. The letter also makes it clear that the protection of the consumer in their payment journeys is central to the governments vision of growth.

¹⁴ [PSR CP17/2 Report and Consultation Authorised Push Payment Scams 'Resolving Disputes'](#) page 45

¹⁵ [Sunday Times: I lost £190k in a Ponzi scheme, but Barclays says it's not a scam](#)

¹⁶ [FCA Handbook Chapter 3 DISP](#)

¹⁷ [Call for Input: Modernising the Redress System](#)

¹⁸ [Letter from the Chancellor of the Exchequer to the CEO of the FCA and MD of the PSR providing recommendations on payments regulation](#)

- 5.3. But the Chancellor's message seems entirely at odds with the current behaviour of both the payment services industry and FOS towards consumers. Behaviour that will, in all probability, result in consumers losing well in excess of £10bn to investment fraud during the life of this Parliament, in the vast majority of cases without the reimbursement that they are rightfully due.
- 5.4. For over £10bn to be lost from the economy seems to be wholly inconsistent with the government's 'defining mission' of growth.

6. CONCLUSIONS

- 6.1. Banks and payment services companies are the parties best placed to manage the risks of investment fraud, but they are the least incentivised to do so.
- 6.2. Whether the loss that a customer has incurred is due to an investment fraud or a civil dispute requires a data gathering and analysis process. However, banks are not making a genuine attempt to gather facts and understand whether, on the balance of probability, an investment fraud has occurred.
- 6.3. The financial incentive that the Code (and MR) was designed to create is not working effectively in the context of investment fraud. This is because:
- i The payments services industry has a clear and obvious conflict-of-interest.
 - ii It is simple and effective for the banks to rely on their strategy of 'plausible deniability'.
 - iii There is no independent dispute resolution mechanism to both gather and assess the facts when this happens.
 - iv FOS is either unwilling or unable to investigate complaints in relation to reimbursement for losses from investment frauds that are APP Scams and hence is not resolving complaints fairly and reasonably, quickly, and with minimal formality.

7. RECOMMENDATIONS

- 7.1. My recommendation is that an independent counter-investment fraud utility function (the 'Utility') is set up to:

- i Gather and analyse data relating to alleged investment fraud.
- ii Assess, based on the criteria set out in the PSR’s policy statement and on the balance of probability, whether an investment fraud has occurred.
- iii Share the assessments with the payment services industry and FOS.
- iv Consider secondary objectives such as to:
 - Provide prepared leads to banks other parties impacted by the fraud (eg HMRC and trade suppliers) to consider private prosecutions.
 - Provide input into disruption and fraud prevention strategies.
 - Better inform discussion on the scale, cost and nature of Investment Fraud.

7.2. FOS would use the assessments to consider individual complaints, where necessary, applying their philosophy of ‘each case on its merits’¹⁹.

7.3. The Utility needs to be free from the conflict-of-interest issues highlighted above, funded through a mechanism such as the Economic Crime Levy.

7.4. The payment services industry, FOS and the FCA should be invited to be part of the governance process, together other stakeholders such as the Consumer’s Association and Citizens Advice.

8. TEN EXAMPLE ALLEGED INVESTMENT FRAUDS DESCRIBED BY BANKS AS ‘CIVIL DISPUTES’

8.1. The table below gives ten examples that I could speak to of alleged investment frauds that have been described as civil disputes by the banks and where customers have not been consistently reimbursed under the Code or MR.

• Accumulate Capital	£15m
• ACH Investments	£5m
• Aquila Apartments and management	£10m

¹⁹ Factoring in individual circumstances and the exceptions set out in the Code and MR.

• Black Capital Partners	£50m - £75m
• Domo Developments	£6m
• Glenn Armstrong	£2m
• Joint Ventures in Property (JVIP)	£14m
• Moustaphe Mounde Telecoms (MMT)	£6 - £10m
• Raedex Consortium / Buy2LetCars	£60m
• Smith & Partner	£14m
Total Estimated Victim Loss	£182m - £211m

2 December 2024