

**DISPUTE RESOLUTION: COMPLAINTS (AUTHORISED PUSH PAYMENT
FRAUD) INSTRUMENT 2018**

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes and amends the Voluntary Jurisdiction rules as set out in the Annexes to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary Jurisdiction);
 - (2) paragraph 8 (Information, advice and guidance) of Schedule 17;
 - (3) paragraph 20 (Voluntary jurisdiction rules: procedure) of Schedule 17; and
 - (4) paragraph 22 (Consultation) of Schedule 17.
- B. The Financial Ombudsman Service Limited notes that, for the avoidance of doubt, the Transitional Provisions at TP 1.1 in Annex B to this instrument apply equally to the Voluntary Jurisdiction of the Financial Ombudsman Service Limited and the Compulsory Jurisdiction.
- C. The making and amendment of the Voluntary Jurisdiction rules by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- D. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Act:
- (1) section 137A (FCA’s general rule making power);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 226 (Compulsory jurisdiction); and
 - (5) paragraph 13(4) (FCA’s rules) of Schedule 17.
- E. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- F. The Financial Conduct Authority approves the Voluntary Jurisdiction rules made and amended by the Financial Ombudsman Service Limited under this instrument.

Commencement

- G. Part 1 of Annex B comes into force on 14 December 2018. The remainder of this instrument comes into force on 31 January 2019.

Amendments to the Handbook

- H. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- I. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

Citation

- J. This instrument may be cited as the Dispute Resolution: Complaints (Authorised Push Payment Fraud) Instrument 2018.

By order of the Board of the Financial Ombudsman Service Limited
7 December 2018

By order of the Board of the Financial Conduct Authority
13 December 2018

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

Comes into force on 31 January 2019

<i>authorised push payment fraud</i>	a transfer of funds by <i>person A</i> to <i>person B</i> , other than a transfer initiated by or through <i>person B</i> , where: <ol style="list-style-type: none">(1) A intended to transfer the funds to a <i>person</i> other than B but was instead deceived into transferring the funds to B; or(2) A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent.
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In this definition, “initiated” should be construed in the context of the way it is used in the *Payment Services Regulations* (so that, for example, funds transferred by *credit transfer* would be included but not where they have been transferred by *direct debit* or debit card or credit card via a merchant).

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text.

Part 1: Comes into force on 14 December 2018

2 Jurisdiction of the Financial Ombudsman Service

...

2.7 Is the complainant eligible?

...

2.7.6 R To be an *eligible complainant person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(2A) the complainant is (or was) a payer in a payment transaction in relation to which the respondent is (or was) the payee's payment service provider, provided the complaint relates to the respondent's obligations under regulation 90(3) of the Payment Services Regulations;

...

...

TP 1 Transitional provisions

1.1 Transitional provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					

45	<u>DISP 2.7.6R(2A)</u>	<u>R</u>	<u>DISP 2.7.6R(2A) applies in relation to a <i>complaint</i> concerning an act or omission which occurs on or after 13 January 2018.</u>	<u>14 December 2018</u>	<u>14 December 2018</u>
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Part 2: Comes into force on 31 January 2019

2 Jurisdiction of the Financial Ombudsman Service

...

2.7 Is the complainant eligible?

...

2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(2A) the complainant is (or was) a *payer* in a *payment transaction* in relation to which the *respondent* is (or was) the *payee's payment service provider*, provided the *complaint* relates to the *respondent's* obligations under regulation 90(3) of the *Payment Services Regulations*;

(2B) the complainant is a *person* that has transferred funds as a result of an alleged *authorised push payment fraud* and both:

(a) the *respondent* is (or was) involved in the transfer of the funds; and

(b) the *complaint* is not a *PSD complaint*;

...

2.7.7 G (1) *DISP 2.7.6R(5)* and *DISP 2.7.6R(6)* include, for example, employees covered by a group permanent health policy taken out by an employer, which provides in the insurance contract that the policy was taken out for the benefit of the employee.

(2) DISP 2.7.6R(2B) includes any complaint that the respondent did not do enough to prevent, or respond to, an alleged authorised push payment fraud.

...

TP 1 Transitional provisions

1.1 Transitional provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
46	<u>DISP 2.7.6R(2B)</u>	<u>R</u>	<u>DISP 2.7.6R(2B) applies in relation to a complaint concerning an act or omission which occurs on or after 31 January 2019.</u>	<u>31 January 2019</u>	<u>31 January 2019</u>