

20 July 2021

Final report by the Complaints Commissioner**Complaint number FCA00915 BoE000007 PSR0002***The complaint*

1. You have asked me to review a joint complaint about the Financial Conduct Authority (FCA), the Bank of England (the Bank) and the Payment Systems Regulator (PSR).

What the complaint is about

2. You allege that Building Society X has breached its obligations under the CHAPS Reference Manual (CRM). You have been in protracted correspondence with the FCA, the Bank and the PSR. I can summarise your main concerns and queries as follows:
 - a. You have tried to establish who is responsible for overseeing Building Society X's compliance with the CRM.
 - b. You have pointed out a potential area of Building Society X's non-compliance with the CRM and would like the responsible regulator to take action. You say that Building Society X has not complied with paragraph 5.1 and 5.2 of the CRM, which states that

Terms relevant to sending Customers

5. A Participant (as a **sending Participant**) shall ensure that its contract with a Customer who wishes to make payments through CHAPS using the sending Participant's payment services provides (in easily understandable language and in a clear and comprehensible form):
 - 5.1 an explanation of the unique identifier that must be provided by the Customer in order for a payment to be properly executed through the CHAPS System;
 - 5.2 that the sending Participant will make a payment solely on the basis of a unique identifier and will not execute it on the basis of the intended recipient's name;

- c. In particular, you say that neither Building Society X's CHAPS Transfer forms, nor its staff, make customers aware that payments will not be

matched to the recipient's name which contravenes 5.2 above, even though both Building Society X staff and CHAPS forms require details of the beneficiary's name and address.

- d. As part of your personal research into this matter, you believe that non compliance with the CRM on this issue may be widespread across the financial services industry. You have provided CHAPS forms for 11 financial services providers which you believe are non compliant in this area as evidence of this. You would like the relevant regulator to ensure CHAPS participants are adhering to the CRM.
- e. You would like the responsible regulator to offer you compensation for your mother's involvement in authorised push payment fraud (APP) stemming from a CHAPS transfer she made through Building Society X.

What the regulators decided

The Bank

3. The Bank excluded your complaint. It said that it has

'no statutory oversight functions in relation to CHAPS, therefore there is no statutory basis or requirement for the Bank to act as regulator in relation to the CHAPS system. The Bank is the operator of the CHAPS system and its relationship with direct participants is contractual. The Bank is unable to disclose any information about the Bank's contractual arrangements with direct participantson the basis that disclosure would, or would be likely to, prejudice the commercial interests of direct participants.
4. Although it excluded your complaint, the Bank also clarified that it has:

'various means to manage such risks including the rules, requirements and procedures set out in the CHAPS Reference Manual that form part of the contractual relationship with direct participants. Third parties, such as individuals, do not have any rights under these contracts and the Bank is not under any statutory, regulatory or contractual obligation to address individual complaints.'
5. The Bank also explained to you that Building Society X is an indirect participant in the CHAPS system. This means it is not admitted to participate in the CHAPS

system under contract with the Bank. In other correspondence the Bank explained to you that the CRM does not require direct participants to ensure that indirect participants adhere to all the rules of the CRM.

The FCA

6. The FCA summarised your complaint as follows:

'Part One

You claim that the FCA are not adhering to the FCA Handbook, namely SUP 9.1.3; by refusing to give you guidance on how this rule is to be applied in relation to your particular case. You asked the FCA to give guidance on how rules 5 and 5.2 on page 46 of the CHAPS transfer manual need to be applied, and whether [Building Society X] have been in breach of their regulatory obligations in relation to these. The FCA told you the responsibility is with the Bank of England. You contacted the Bank and they said you need to contact the FCA as it is a 'conduct issue'.

Part Two

You claim that both the Bank of England and the FCA claim they do not have to deal with banks breaching regulatory obligations of the CHAPS Reference Manual. You would like to be informed who actually does regulate this'.

7. The FCA did not uphold your complaint.

In response to Part One the FCA acknowledged its initial response 'whilst accurate could possibly have done more to draw attention to Regulation 90 of the Payment Services Regulations 2017 (PSRs 2017), and our associated guidance in the FCA payment services and e-money approach document'.

In response to Part Two of your complaint the FCA responded that

The Bank of England have confirmed to you that the CHAPS Reference Manual is not a regulatory rule or obligation. They have also confirmed the CHAPS Reference Manual is a document issued by the Bank of England which the direct participants have contractually agreed to adhere to. Therefore, as the CHAPS Reference Manual is not a regulatory rule or obligation it cannot be breached. For the reasons given above, I am unable to uphold Part Two of the complaint.

8. The FCA provided further information to you as follows:

‘The specific CHAPS rule in question relates to the use of unique identifiers, and payments only being executed in accordance with the unique identifier provided by the customer. This is similar to regulatory requirements under Regulation 90 of the PSRs 2017 which limit a PSP liability for incorrect execution so long as executed in accordance with the unique identifier provided by the customer. And that Regulation 90 of the PSRs 2017 states that as long as the Payment Service Providers (PSP) process the payment transaction in accordance with the unique identifier provided by the payment service user, they will not be liable under the non-execution or defective execution provisions of the PSRs 2017 for incorrect execution if the unique identifier provided is incorrect.

Payment Services and Electronic Money Approach Document this is also provision of an incorrect unique identifier and PSPs must cooperate and make reasonable efforts to assist the payer in recovering the funds as required under regulation 90 of the PSRs 2017’.

The PSR

9. The PSR responded to your concerns and queries but did not formally investigate your complaint under the Scheme, although it invited you to submit a formal complaint if you chose to do so. You have sent me the PSR response and have asked me to investigate the matter across all three regulators. Usually, under the rules of the Scheme, I would allow the PSR to investigate the matter first, but in this case, I have decided to take on the investigation of the complaint against the three regulators as I do not think there is any benefit in advising you to complain formally to the PSR given the circumstances.

10. The PSR said to you that

‘CHAPS is co-regulated by the three authorities, with each authority holding a different responsibility in relation to CHAPS:

The PSR regulates the CHAPS system and CHAPS participants (except for the Bank of England as operator) for competition, innovation and promoting the interests of service users.

The FCA regulates the majority of CHAPS participants with respect to conduct and financial crime objectives, and in relation to the majority of the Payment Services Regulations 2017.

The Bank of England owns and operates the CHAPS system, and it is the Bank of England that can enforce the CHAPS system rules on its participants'.

11. The PSR concluded that in this instance it did not have the authority to assist you and that it had previously advised you to contact the Bank as the operator of the CHAPS system.

Why you are unhappy with the regulator's decision

12. You do not understand who the relevant regulator is for the CHAPS system and in particular for paragraph 5.2 of the CRM and you would like me to clarify this for you.
13. You complain that the relevant regulator is 'allowing' CHAPS participants to breach the CRM rules.
14. You would like the relevant regulator to offer you compensation for your mother's losses due to Building Society X's non compliance with paragraph 5.2 of CRM.

My analysis

15. Your complaint stems from an authorised push payment fraud perpetrated on your mother in June 2018. You say that your 'mother believed she was sending £X to her eldest son as they had agreed, but emails were intercepted and she was tricked into transferring the money to a fraudsters account'. What appears to have happened is that your mother as the sender was transferring funds to a legitimate payee but was deceived into providing the account number and sort code of an account held by a different person, and so transferred the funds via CHAPS to a fraudster.
16. On her behalf, you approached Building Society X, the indirect sending participant in the CHAPS system to try and resolve the matter. You say that Building Society X's staff and CHAPS form did not make customers aware that payments will not be matched to the recipient's name despite staff taking down details of the recipient's name and address. Building Society X's staff did not

inform your mother that this information would not be cross checked and payment would only be made according to the unique identifier, which is the sort code and account number.

17. You say that you complained about this to Building Society X. Initially, Building Society X replied to you that it was not part of the process, its branch staff follow the CHAPS process in such detail.
18. You continued to correspond with Building Society X on your complaint and it subsequently replied to you that it had complied with its obligations and referred you to the small print in its contractual terms and conditions, where it was specified that for CHAPS payments, the bank's name and address, sort code, account number and, if applicable, reference would be required. You say Building Society X argued that as the small print did not specify the recipient's name as a requirement this proved compliance with paragraph 5.2 of the CRM.
19. You do not agree that Building Society X has complied with paragraph 5 of the CRM as compliance with this paragraph states that 'a sending participant has to provide its customer... in easily understandable language and in a clear and comprehensible form that the payment will not be executed on the basis of the intended recipient's name'.
20. You further point out to me that Building Society X staff specifically asked for the recipient details and that:

'In November 2019, the Treasury's report on Economic Crime stated - 5. The fact that banks were not previously confirming payees is a serious failure to protect customers from harm. Asking for such information but not using it would have created a false sense of security among some customers when sending payments. It might have been better for banks to not ask for this information at all if they were not going to use it for fraud prevention. (Paragraph 40)'.
21. Having researched the matter further, you feel that at least 11 other financial services providers' CHAPS forms do not adhere to paragraph 5 of the CRM, and you attach their CHAPS forms as evidence. In one case, after you raised the issue with your building society Y, it conceded your point and amended its CHAPS form to read as follows:

‘Beneficiary details -person or organisation to be paid

Confirmation of Payee check-will not be performed on this transaction. You must ensure the correct account name and number are used here to avoid the RISK TO YOU of payment loss or further charges. If any details are not known, please consult the beneficiary who should provide this information before the instruction is provided’.

22. However, you were not able to resolve the issue with Building Society X and subsequently approached the regulators with points 2 a-d above.
23. What followed was an initial period during which you were referred from regulator to regulator for answers. Partly this was due to the fact that the different regulators perform different functions with respect to different aspects of the CHAPS system, and partly because your concerns were interpreted first as requests for information on what is a complex subject, rather than a formal complaint.
24. Ultimately though, it seems to me that the three regulators did come to understand that
 - a. you were unhappy about your mother’s personal CHAPS experience with Building Society X and wanted to know who is the relevant regulator for the CHAPS system, and for the relevant regulator to assist you in your dispute with Building Society X and/or compensate you for your mother’s losses; and
 - b. further that you were alleging that Building Society X and other financial services providers were not complying with their obligations under paragraph 5 of the CRM.
25. Regarding the matter of the relevant regulator. Apart from general considerations about which regulator oversees which part of the CHAPS system, you had a specific case which you referred to the regulators: you alleged that an indirect participant (Building Society X) was not complying with paragraph 5 of the CRM, in particular 5.2 which says that the sending participant will make a payment solely on the basis of a unique identifier rather than the recipient’s name, and that this information has to be communicated clearly to the sending participant’s customer.

26. The Bank explained to you that Building Society X was an indirect participant in the CHAPS system but that the CRM does not require direct participants to ensure that indirect participants adhere to all the rules of the CRM.
27. However, the Bank also explained to me as a result of my further queries that
- ‘notwithstanding that the complaint falls outside the Complaints Scheme, paragraph 2 of Section 3 (End user terms) of Part B of Chapter III of the CRM requires direct participants to ensure that the contracts between indirect participants and end users provides all matters which are specified in Section 1 (Customer terms) of Part A of Chapter III of the CRM. This includes paragraphs 5.1 and 5.2.’
28. In summary then, the Bank is the operator rather than the statutory regulator of the CHAPS systems. It has a contractual relationship with the direct participants, who have agreed to comply with CRM and who in turn have an obligation to ensure that indirect participants comply with paragraph 5. The Bank can enforce the rules on the participants (see paragraph 27 above) , but it is not under a statutory obligation to do so, and therefore any complaint you have about the Bank’s operation of the CHAPS system is excluded under the Complaints Scheme. The Bank has excluded your complaint on paragraph 3.4(d) of the Scheme which provides that complaints about the actions, or inactions, of the Bank that do not relate to its functions under Part 18 of FSMA or under Part 5 of the 2009 Act are excluded from the Scheme. I agree that such an exclusion applies in this case.
29. The FCA is responsible for the making sure that Banks comply with regulation 90 of the Payment Services Regulations 2017.
30. Further to my queries, the FCA has confirmed to me that:
- ‘The FCA is not responsible for overseeing issues relating to the CHAPS Reference Manual. The CHAPS Reference Manual is not a regulatory rule or obligation. The CHAPS Reference Manual is a commercial agreement between participants and responsibility for the CHAPS Reference Manual passed to the Bank of England in 2017. The CHAPS Reference Manual is issued by the Bank of England which the direct participants have contractually agreed to adhere to.’

The FCA supervises firms conduct under the Payment Services Regulations 2017 (PSRs), which include requirements (Regulations 43 and 48) for payment services firms to provide customers with the payment routing information (or unique identifier) that the customer needs to provide for a payment instruction to be properly initiated or executed. However, the PSRs do not require firms to disclose to customers that they will not execute a transaction based on the intended recipient's name.

Although section 5 of CHAPS Reference Manual and Regulations 43 and 48 of the PSRs 2017 both relate to the use of unique identifiers in CHAPS payments, the FCA's supervision of firms conduct under the PSRs does not extend to the issues set out in section 5.2 of the CHAPS Reference Manual.

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31. The PSR has said it has no oversight of the matters you raise and you have told me you have been to the Financial Services Ombudsman but it considers your complaint out of jurisdiction.
32. For the reasons above, your complaint that Building Society X in particular, and other financial services providers in general, are not complying with paragraph 5.2 of the CRM is excluded from the Complaints Scheme, as it is not within the regulatory remit of any of the three regulators.
33. Although your complaint may be formally excluded under the Scheme, you are raising concerns about a topic which has already been the subject of both regulatory and government focus. In response to APP issues, in August 2019 the PSR issued a direction to the UK's six largest banks to implement confirmation of payee (CoP) measures and on 1 July 2020 the PSR issued a statement that there is now widespread coverage of CoP in the financial services industry. This will help reduce APP fraud in future. I appreciate this will be of little consolation

to you and likely of no help in your mother's circumstances, however I welcome this highly important measure in consumer protection which hopefully will ensure fewer people are exposed to the APP fraud your family has experienced.

34. Nevertheless, your complaint highlights a complicated hybrid contractual-regulatory oversight mechanism for the CHAPS system in which the three regulators participate in different ways. You were left confused about each of the regulators responsibilities and I can understand why. There is a debate to be had about whether the oversight system can be simplified, but that is not a matter this Scheme can resolve. In response to my preliminary report you told me that you remain confused about who 'regulates' or deals with indirect participants not adhering to CHAPS rules and in particular paragraph 5.2 of the CRM. You also told me that you remain of the view that the FCA should investigate the conduct matters arising in this case. I appreciate this report highlights some complex material, however, I have already covered the explanation you seek in paragraphs 28-30 above and there is nothing further I can add.
35. I now turn to the matter of your mother's loss due to APP during a CHAPS transfer through Building Society X. You have asked that the regulator (s) compensate you for what you feel is Building Society X's non compliance with the CRM rules. I am sorry to hear that your mother has lost her funds to fraudsters, however, the remedy you seek is not possible under the Scheme. This is because even if your complaint were not excluded from the Scheme, the regulators do not investigate individuals' complaints against the firms they regulate. This does not mean that the regulators cannot investigate concerns arising from information about individual complaints, but they investigate those in the context of considering whether or not some form of action is justified, rather than whether or not the individual requires redress. Any action the regulators may or may not take as a result of the information you provided could not lead to redress for you personally.
36. I understand you will be raising this matter with your local MP.

Amerdeep Somal

Complaints Commissioner

20 July 2021