

CONSULTATION PAPER 310

Review of the ePayments Code

Submission by Peter Maganiotis

Summary of submission

Unauthorised Transactions

1. *Unclear*
 - ePayments Code, Chapter C, clause 9.1

2. *Current Setting - Code Breaches due to uncertainty and misinterpretation of clause 9.1*
 - Financial Service Providers misinterpretation and misapplication of Chapter C
 - Financial Service Providers empowering themselves to put in place preliminary provisions before adhering and applying the code.

3. *Clear provisions of the Code contrary to FSP's approach and interpretation*
 - Code clauses 11.10 and 17.3 are contrary to FSP current practise

4. *FSP Protections*
 - FSP protections in clause 11.2 of the Code and their Terms and Conditions

5. *Code Conflicts with itself*
 - Clause 9.1 in Chapter C disqualifies Chapter C as a whole and therefore disqualifies itself for being relied upon.

6. *Amendments*
 - Proposed amendment to clause 9.1 as to make it clear and consistent with the code

7. *Examples*
 - Examples of FSPs misinterpreting and misapplying the Code resulting in denial of Chapter C of ePayments Code without the right to do so and in breach of the Code.

Proposal

B3 We propose to consider whether the current settings in the Code for unauthorised transactions are appropriate and sufficiently clear.

Your feedback

B3Q1 What are the benefits and challenges of the Code's current settings for unauthorised transactions?.

B3Q2 What role, if any, could the Code play in preventing or reducing the risk of customers falling victim to financial scams, or helping customers who have lost money through scams?

1. Insufficiently Clear – Chapter C, Clause 9.1

Chapter C

9.1 This Chapter applies to unauthorised transactions. It does not apply to any transaction that is performed by a user or by anyone who performs a transaction with the knowledge and consent of a user.

2. Current Settings

Transactions which this Code is applicable to are subject to customer disputes. Consumers are required to report disputed transactions immediately to their Financial Service Provider (FSP) without delay. The reported information provided by consumers forms the starting point of the dispute which then falls in to one of the two below categories:

- Disputed - Unauthorised transaction
- Disputed - Authorised transaction

FSP's have adopted the view that they are not required to adhere to Chapter C of the Code prior to making a determination on the threshold issue of whether the disputed transactions were authorised or unauthorised.

FSP's have interpreted Chapter C, clause 9.1 as giving them the right to determine the threshold issue before adhering to the rules set out in the Code. FSP's have consistently used this to deny consumers the protections of Chapter C of the Code. The Code is not sufficiently clear in that clause 9.1 of Chapter C is applicable upon a consumer reporting an unauthorised transaction and not on any preliminary threshold question.

3. Sufficiently Clear

Below are clauses which are sufficiently clear in making Chapter C available on the basis of the consumer's report of the disputed transactions.

- (i) Chapter C, 17.3 is specific in making Chapter C available to customers who report unauthorised transactions. It is upon reporting the unauthorised transactions that Chapter C is to be applied and not on the condition of the FSP having answered the threshold question. Clause 17.3 states:

Chapter C

17.3 If a user reports the loss, theft or misuse of a device or breach of pass code security, the liability of the holder for unauthorised transactions is limited by Chapter C of this Code.

- (ii) Chapter C, 11.10 is specific in it makes Chapter C available where a consumer reports an unauthorised transaction that is covered by the Code and also covered by a relevant card scheme. Clause 11.10 states:

Chapter C

11.10 If a user reports an unauthorised transaction on a credit card account, debit card account or charge card account:

- a) the subscriber must not hold the holder liable for losses under clause 11 for an amount greater than the liability of the holder if the subscriber exercised any rights it had under the rules of the card scheme at the time the report was made, against other parties to the scheme (for example, charge-back rights),

- (iii) Card Schemes Rules also echo the approach taken from clause 17.3 and 11.10 of the Code in that the starting point of the customer disputing transactions is based on the report as given by the customer and not the findings of the FSP to any threshold question.

An example of this is in the MasterCard Chargeback Guide. The MasterCard Chargeback Guide sets out the rules in which "No Cardholder Authorisation" fraud related chargeback disputes are to be handled. Page 75 and 76 of the guide provides that the starting point of the dispute is when the cardholder states that they did not engage in the transaction. The guide specifically says:

MasterCard Chargeback Guide

No Cardholder Authorization

This section provides information in handling a dispute when the cardholder states that the cardholder did not engage in the transaction.

4. FSP Protection against Fraud and Chargeback Fraud

Fraud is the deliberate deception to secure unfair or unlawful gain.

Chargeback Fraud occurs when a consumer illegitimately requests a chargeback for transactions made from their card after receiving the products or services they requested as requested.

- (i) Where a consumer reports disputed transactions as being unauthorised when they are in fact authorised the consumer has deliberately attempted to secure unlawful gain through fraud. The Code in these instances provides sufficiently clear and adequate rights to protect the FSP against such claims and also allows the FSP to answer their threshold question as to whether the disputed transactions are authorised or unauthorised. Chapter C, 11.2 states:

Chapter C

11.2 Where a subscriber can prove on the balance of probability that a user contributed to a loss through fraud, or breaching the pass code security requirements in clause 12:

- (a) the holder is liable in full for the actual losses that occur

- (ii) Terms and Conditions held with FSPs also echo the same protections afforded in clause 11.2 of the Code. An example of this is in the CBA's Savings Account Terms, clause 4.1. CBA's clause 4.1 accepts that a user reporting an unauthorised transaction is the starting point of the dispute as they provide details of when the user will receive a refund. Clause 4.1 goes further and states that in instances where a user who reported unauthorised transactions has committed fraud in doing so, is not entitled to a refund. CBA's clause 4.1 states:

4.1. Getting a refund on unauthorised electronic transactions

When you won't get a refund

You or any other user:

- Commits fraud
- If any of these happen, we may hold you responsible for the transaction unless we are able to get a refund for you under the card scheme rules or the ePayments Code entitles you to a refund (for example, because the loss exceeded your available limit).

5. Code Conflict in FSP Approach

- (i) FSPs specifically rely upon clause 9.1 and claim that the transactions in dispute are authorised. The FSPs use clause 9.1 to specifically make the entire of Chapter C unavailable to the dispute. The code conflicts with itself when the FSP's interpretation is adopted. This is because clause 9.1 exists in Chapter C of the

Code and if clause 9.1 is to make Chapter C in its entirety unavailable to the dispute it also makes itself unavailable as it disqualifies Chapter C.

- (ii) Chapter F, 38.7 places an obligation on the FSP to provide the customer who raises the complaint with a reason to their decision and to provide them with relevant references to the code in which their decision relies upon. How would a FSP reference clause 9.1 as the reason for their decision when Chapter C is unavailable to them and to the user. Clause 39.7 states:

Chapter F

38.7 A subscriber must tell a user who makes a complaint:

- (a) the outcome of the complaint, and
 - (b) the reasons for the outcome, including references to the relevant clauses of this Code.
- (iii) FSP have taken the approach to make a finding on their threshold question and in instances where they find that the user has authorised the transactions they rely on clause 9.1 to deny applying Chapter C to the dispute. A user should be able in the same regard to rely upon clause 9.1 however how is a user able to rely upon clause 9.1 of Chapter C if the FSP interprets the Code and makes Chapter C as a whole unavailable. Clause 9.1 cannot eliminate itself but yet be relied upon, if it could it would make for an ineffective provision of the code.

6. Proposed Amendment to the Code

Chapter C, clause 9.1 of the Code be amended as to be sufficiently clear. Clause 9.1 should be amended to:

Chapter C

9.1 This Chapter applies to handling a dispute when the user states that the user did not engage in the transaction. It does not apply to any transaction that a user reports as being performed by a user or by anyone else with the knowledge and consent of a user.

7. Examples of FSP Code Breaches

The examples provided are actual cases where the Code was misinterpreted and as a result consumers were denied the use Chapter C of the Code. The full details of 6 case examples have been collated and are attached to this submission. Attachment titled Submission_Support_Documentation.pdf.