

The complaint

Mrs M complains that HSBC UK Bank Plc trading as first direct hasn't refunded her the money she lost as the result of a scam.

What happened

In late 2020, having recently moved to a new home, Mrs M transferred the sum of money she'd thus freed up into her First Direct account. She was planning to keep this held in secure savings, including investing in premium bonds.

Not long after, Mrs M received a call from someone claiming to be calling from First Direct's fraud team. Unfortunately, unknown to Mrs M at the time, this caller was a scammer impersonating the bank.

The caller told her accounts were at risk. Mrs M was instructed to make payments to move her money to what she was led to believe was a safe account. Mrs M believed this set up in her name to supposedly protect her funds, but in reality, it wasn't — and instead was under the control of the fraudster.

Mrs M says that at the time, she was panicked by what the caller was telling her, fearing that her savings were at risk.

The first payment she was told to make was direct to the supposed safe account, in the sum of £10,000.

The caller then told Mrs M she'd need to send payments via an account she held with another bank. She transferred two more payments, each of £10,000, to an account she holds with another bank. She was then told to transfer the money from there to the new 'safe account' which she did.

Lastly, the scammer told Mrs M to transfer £10,000 to her daughter, and then for her daughter to transfer this on to Mrs M's supposed 'safe account'. The caller told Mrs M that her daughter should move the money in four payments of £2,500 each.

The first of these payments was processed by her daughter's building society. But the next payment requests were blocked by the building society's fraud prevention systems.

At this point Mrs M had been on the call to the scammer for over two hours. After the call had ended, Mrs M started to realise something wasn't right and called First Direct to report it.

Her daughter subsequently returned the remaining £7,500. But her daughter's building society was unable to recover any of the £2,500 that had been moved on to the 'safe account'.

Potentially relevant to these transactions is the Lending Standards Board's Contingent Reimbursement Model Code (the LSB's CRM Code). This is a voluntary scheme First Direct has signed up to, designed to reimburse customers that have fallen victim to an Authorised

Push Payment scam (APP scam). The starting position under the CRM Code is for a customer to be refunded. A firm might choose not to refund if it establishes that a customer failed to take sufficient care when making a payment.

Mrs M's other bank is also a signatory of the CRM Code. It refunded Mrs M fully for the payments she'd transferred onwards from that account, a total of £20,000. First Direct refunded the £10,000 Mrs M had transferred directly to the 'safe account', part of which was paid by the receiving bank. I understand both banks did so under the terms of the CRM Code.

This left Mrs M out of pocket by the sum she'd lost through the transfer made via her daughter's account — £2,500.

First Direct declined to consider this remaining loss under the CRM Code. It said the CRM Code didn't apply because the money had initially gone to Mrs M's daughter rather than direct to the 'safe account'. It thought the liability for any shortfall should sit with Mrs M's daughter's building society.

Mrs M didn't think this was fair, and she asked this service to review the matter impartially.

I issued my provisional findings on the merits of Mrs M's complaint on 11 August 2022. In my provisional findings, I explained why I intended to uphold Mrs M's complaint. An extract of that decision is set out below and forms part of this final decision:

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Under the relevant regulations, and in accordance with general banking terms and conditions, banks have an obligation to execute an authorised payment instruction without undue delay. In consequence, the starting position is that liability for an authorised payment rests with the payer, even if they made that payment as the consequence of a fraud or scam.

But that isn't the end of the story. Where a customer made the payment as a consequence of the actions of a fraudster, I consider it may sometimes be fair and reasonable for a bank to reimburse its customer even though that customer authorised the payment.

In particular, First Direct is a signatory to the CRM Code, which provides additional protection to the victims of APP scams. However, First Direct argues that the CRM Code should not apply to the payment Mrs M sent to her daughter. It does not believe Mrs M is afforded the additional protection of the CRM Code and does not believe it is liable to reimburse her for the remaining loss.

In considering this, I have carefully reviewed the relevant material surrounding the scope of the CRM Code - in relation to this type of scam. In particular, that includes the wording of the CRM Code, as it stood at the time in question, and what the Lending Standards Board has said about the interpretation of that wording in its November 2021 publication: 'Call for Input: Findings Report'.

In that report, the LSB describes "multi-generation APP scams" as follows:

“These scams, sometimes referred to as ‘friends and family scams’, typically involve a customer being duped into increasing the number of transactions and/or payees involved in the scam (for example, being convinced to transfer funds to a family member who in turn is asked to further forward them, onto the scammer’s account). While the funds have been moved to a trusted third party, in that they are a friend or family member, the payment has left the control of the payee. This approach seeks to evade the detection and preventative measures of the Code [...]”

The report goes on to say that the investigation of such multi-generation scams “is captured within the scope of the CRM Code”.

The payment disputed in the present complaint is one that Mrs M made to her daughter, having been deceived into believing she was acting on the legitimate instructions of her bank to secure her funds. I am satisfied that this payment meets the definition within the CRM Code of an APP scam – Mrs M transferred these funds to another person for what she believed were legitimate purposes, but which were in fact fraudulent.

By contrast, the two payments Mrs M made to her own account held elsewhere, do not fall within the CRM Code’s definition of an APP scam – that money was not transferred to ‘another person’.

I find the distinction here important. The remaining loss has been sustained by Mrs M, and originated in the payment journey between Mrs M’s First Direct account and her daughter’s account. I accept that the method used here by the scammer appears deliberately intended to evade First Direct’s fraud detection and protection systems, but that does not in itself mean that the CRM Code ought not to apply.

Mrs M has suffered a financial loss through an APP scam, and a type of APP scam that the LSB says is captured within the scope of the CRM Code.

First Direct argues that responsibility under the CRM Code should sit with the daughter’s building society and not with it. It directs Mrs M to take up the loss she has suffered with her daughter’s bank. I do not agree.

Being the party that has suffered a financial loss here, Mrs M reported the matter to First Direct. Receiving its customer’s report of the scam, and in its capacity as the victim’s bank, First Direct then has the principal responsibility for investigating and responding to the scam report (given this is the type of multi-generation scam caught within scope of the CRM Code). I consider that First Direct is also then responsible under the CRM Code for both the reimbursement decision and for reimbursement of the victim.

Leading on from this the CRM Code states: “Once a decision to reimburse has been made, the Firm of whom the APP scam victim is the Customer should administer the payment of the reimbursement to their Customer without delay. Reimbursement should not be delayed in any way by any question of the allocation of the cost of the reimbursement.”

First Direct also has responsibility under the CRM Code to liaise with the other firms involved (that is not something the CRM Code requires of Mrs M, as the victim and as First Direct’s own customer).

In short, I am satisfied that the CRM Code applies here, and that First Direct has the responsibility under the CRM Code to respond and, where appropriate, to reimburse Mrs M. I consider that to be fair and reasonable in all the circumstances of this case.

On the basis that the CRM Code does apply to Mrs M's transfer, I have therefore gone on to consider whether that means First Direct should have reimbursed Mrs M for the remaining loss.

The starting position under the CRM Code is that the victim of an APP scam should be reimbursed in all but a limited number of circumstances (exceptions to reimbursement). These exceptions include (so far as is relevant here) ignoring an effective warning by failing to take appropriate action in response, and, having made the payment without a reasonable basis for believing it was legitimate.

I don't consider First Direct has established that any of the CRM Code's exceptions to reimbursement can fairly be applied here. In particular:

- First Direct did not provide Mrs M with an Effective Warning while she was making this payment. It follows she did not ignore an Effective Warning here.*
- By the time this payment was made, the scam call had lasted some considerable time and Mrs M has plausibly explained the impact it was having on her. She was under the belief that she was speaking with her bank. In the circumstances, I consider Mrs M had a reasonable basis for believing this was her bank. I'd note in particular the scammer's use of number spoofing and personal information, rendering the deception more convincing.*
- In making the payment, Mrs M believed she was following her bank's instructions to protect herself from fraud. Mrs M was the innocent party here, and not at fault in making the payment. I have not seen anything that would persuade me her bank has established that she made the payment without holding a reasonable basis for believing what she did at the time.*

The CRM Code includes further exceptions to reimbursement, but I am satisfied these do not apply here. It follows that I do not find First Direct can fairly rely on an exception to reimbursement under the CRM Code.

I have considered whether it would be appropriate to add interest to the sum First Direct should now reimburse, and if so, at what rate that interest should apply. Having reviewed the evidence submitted by both sides, I believe Mrs M intended to use the money for low risk savings and would have done so but for the scam. I understand that when Mrs M's daughter returned the residual £7,500, Mrs M paid this into a First Direct savings account. If that was indeed the case, then I consider it would be appropriate for First Direct to pay interest at the equivalent rate to the First Direct savings account on the £2,500 Mrs M was deprived of. This should apply for the period from when First Direct declined to reimburse her until the date of settlement.

I have also thought about the impact this matter has had on Mrs M, and while the primary causes of the distress and inconvenience she has suffered were the criminal actions of the scammers involved, I think the protracted nature of this matter has added to that. I find that First Direct could (and should) have reimbursed Mrs M at an earlier point. So, in all the circumstances I consider it fair and reasonable that First Direct should pay Mrs M a further £150 in recognition of the additional distress and inconvenience it caused.

Putting things right

For the reasons set out by the investigator and above, I intend to find that Mrs M ought reasonably to have been fully refunded under the CRM Code. I therefore intend to direct HSBC UK Bank Plc trading as first direct to pay Mrs M:

- *The amount of the remaining loss, being £2,500; plus,*
- *interest at the rate of Mrs M's First Direct savings account on that amount (less any tax properly deductible). This should be calculated from the date First Direct first declined to reimburse Mrs M until the date of settlement; and,*
- *£150 compensation for distress or inconvenience.*

I invited both sides to provide any further arguments or information by 26 August 2022, after which point, I said I would issue my final decision on the matter.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Responses to my provisional decision

Mrs M responded to my provisional decision saying she accepted the proposed outcome.

While the deadline for responses has now elapsed, First Direct has not replied to my provisional conclusions.

In light of this, I see no reason to depart from the findings and the resolution I proposed in my provisional decision as quoted above, and for the same reasons.

My final decision

For the reasons set out in my provisional decision and above, I find it fair and reasonable in all the circumstances that Mrs M ought to have been fully refunded under the CRM Code. I therefore direct HSBC UK Bank Plc trading as first direct to pay Mrs M:

- The amount of the remaining loss, being the sum of £2,500, within 28 days of receiving notification of Mrs M's acceptance of my final decision; plus,
- Pay interest on that sum at the rate of Mrs M's First Direct savings account on that amount (less any tax properly deductible) calculated from the date First Direct first declined to reimburse Mrs M until the date of settlement; and,
- Pay Mrs M £150 compensation for distress or inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 September 2022.

Stephen Dickie
Ombudsman