

The complaint

Mr and Mrs H complain HSBC UK Bank Plc, trading as first direct ("First Direct"), didn't reimburse the money they lost when Mr H was the victim of an 'authorised push payment' ("APP") impersonation / purchase scam.

While the complaint was referred by both Mr and Mrs H, to make my decision easier to read, I refer only to Mr H – as he made the payment that is in dispute. I mean no discourtesy in taking this approach.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, both parties accept that Mr H was the victim of an impersonation / purchase scam.

Mr H was looking to purchase a puppy for him and his family. Mr H came across an advert for a puppy on a known website that specialises in advertising pets that need a home.

Mr H engaged with the seller of the advert, received images of the puppy and confirmation of the breeder's licence and other documentation such as a bill of sale. Mr H agreed to pay a deposit of £700. Mr H had tried to confirm with the seller whether the payment for the deposit should be paid to the 'deposit box' on the genuine website – with the seller advising the deposit box was a fairly new thing and that they weren't up to date on the technology side of things. Satisfied, and not aware that anything was untoward, Mr H paid the deposit on 20 November 2021 by bank transfer – with the remaining amount to be paid upon collection.

Mr H then started having difficulty in his communication with the seller, who provided excuses to delay matters and then stopped responding altogether. Mr H then went to the address he had been provided with only to find out that the person who lived there was a legitimate breeder but who had unfortunately had their identity and documents used by a fraudster. And multiple other people had fallen victim also. So, sadly for Mr H there was no puppy for sale, and he had in fact unfortunately paid money to a fraudster.

Mr H, having realised he'd been the victim of a scam contacted First Direct to report it and to see whether it could recover any of his funds.

First Direct logged the matter and reached out to the beneficiary bank (the bank where Mr H had sent his funds to) to see if any funds remained that could be recovered. Unfortunately no funds remained that could be recovered.

First Direct also considered whether Mr H should be reimbursed for his losses under the 'Lending Standards Board Contingent Reimbursement Model Code' (the "CRM Code") that it is a signatory of.

The CRM Code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances. First Direct didn't agree that it was liable to reimburse Mr H for the funds he had sent and said one or more of those exceptions applied in this case. It said it didn't consider he'd taken sufficient steps to verify who he was paying and that it had provided him with an 'effective warning'.

Unhappy, Mr H referred his complaint to our service. One of our Investigators looked into Mr H's complaint and thought it ought to be upheld. The investigator didn't believe First Direct had fairly assessed Mr H's claim under the CRM Code. They didn't think that First Direct had provided an effective warning prior to Mr H making the payment. And they didn't agree that First Direct had been able to establish Mr H made the payment without a reasonable basis for believing he was making a legitimate purchase from a legitimate seller.

The Investigator recommended First Direct reimburse Mr H the funds he lost to the scam and pay additional compensation at 8% simple interest per year on that amount from the date it declined Mr H's claim under the CRM Code.

First Direct disagreed with the Investigator's opinion and maintained its position. As the matter hasn't been resolved, I have been asked to make a final decision on the outcome of Mr H's complaint.

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.

Having done so, I am satisfied that:

- Under the terms of the CRM Code, First Direct should have refunded the money Mr H lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- In the circumstances First Direct should fairly and reasonably refund the money Mr H lost.
- The money was taken from the Mr H's current account. Mr H has therefore been deprived of the use of those funds. So First Direct should also pay interest on the amount not yet refunded at a rate of 8% simple per year. This interest should apply from the date First Direct first declined to refund Mr H under the CRM Code, to the date of settlement.

As I've said above, the CRM Code requires payment service providers to reimburse customers who have been the victims of authorised push payment (APP) scams, in all but limited circumstances. If First Direct declines to reimburse its customer in full, it is for First Direct to establish that one, or more, of the listed exceptions set out in the CRM Code itself.

Those exceptions are:

- where in all the circumstances, the customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay, the payment was for genuine goods or services, and/or that the person or business with whom they transacted with was legitimate; or

- the customer ignored an ‘effective warning’ by failing to take appropriate steps in response to that warning.

There are further exceptions within the CRM, but none of these are applicable here.

When assessing whether it can establish these things, a Firm must consider whether they would have had a ‘material effect on preventing the APP scam’.

After having carefully considered all of First Direct’s submissions, I’m satisfied that it has not shown that Mr H made the payment without a reasonable basis for believing that he was paying a legitimate seller or ignored an effective scam warning. I will go on to explain why I have reached this finding.

Did Mr H have a reasonable basis for belief when making the payment?

When considering this aspect, I am mindful that the test here is whether Mr H had a *reasonable basis for belief* when making the payment.

It is important to note at this point, that Mr H hadn’t been scammed before and didn’t expect or want to be scammed. He wasn’t aware that fraudsters could use another person’s identity to fraudulently advertise the sale of a puppy through a legitimate website.

This was a sophisticated scam, that led Mr H to believe he was liaising with a genuine seller – and a seller who had the relevant documentation such as an animal’s welfare licence. Mr H has provided copies of his correspondence with the supposed seller. And from reviewing this I can see why Mr H thought everything seemed legitimate and normal. The fraudster went to great lengths to imitate a real seller. There was lots of detailed information from the seller regarding the puppy and the process. There were no obvious warning signs that things may not be all as they seemed. Mr H also took some reasonable steps to protect himself – by paying a deposit for the puppy with the remaining funds to be paid upon collection and he also sought confirmation of the address and received the seller’s animal welfare licence and a ‘bill of sale’. Given the fraudster had impersonated a genuine seller and used their documents – I can see why Mr H thought he was liaising with a genuine seller.

I appreciate that First Direct say Mr H received an ‘unable to confirm’ Confirmation of Payee (“CoP”) result when he made the payment – and this was because the Receiving Firm (the bank where the funds were being paid to) did not have CoP in place. But the warning states to check the account details with the person being paid. Given Mr H had no reason to doubt who he was paying and had what he considered to be the right details – I don’t think this would have alerted Mr H to the possibility that something may not be right and that he was falling victim to a scam.

All things considered, I can see why Mr H thought he was dealing with a legitimate seller when making the payment. So I’m not persuaded First Direct has shown that Mr H lacked a reasonable basis for belief when making the payment for it to choose not to reimburse Mr H under the terms of the CRM Code.

Did Mr H ignore an effective warning?

First Direct say that Mr H chose the payment purpose as ‘Making a large purchase (e.g. house or car)’ and was provided with a warning. In this case I’m satisfied that the requirements of the effective warning exception were not met because:

- The warning starts off by advising its customer to use a debit or credit card as it may offer more protection. But it isn't uncommon to use bank transfer as a method of payment for larger purchases.
- The warning then highlights email / invoice intercept scams and that account details can be altered. Here Mr H was liaising with whom he thought was a legitimate seller (albeit it was a scammer) so I don't think this would have made Mr H pause for thought.
- The warning then goes on to list some things that consumers could do to check matters.
- The first point advises to contact the person or company where the money is being sent. The second point advises to check the email address to ensure it is from the correct person. And the third point advises to check for any irregularities in an email invoice. While these steps are potentially useful to help identify an email / invoice scam, I'm mindful that this wasn't the scam that Mr H was falling victim to. Here, Mr H was satisfied with whom he was dealing with and given the nature of the scam none of the steps First Direct recommended would have had made a difference here or had a material effect on preventing the scam.
- The fourth and fifth bullet points are more relevant, but I'm not satisfied they would have had a material effect on preventing the scam and overall the warning isn't an effective warning as set out by the CRM Code. With the fourth bullet point, First Direct advises to check the seller being mindful of false websites and reviews. But again, Mr H thought he was dealing with a legitimate seller from an advert from a legitimate website – so I don't think this would have made Mr H stop and think.
- The fifth bullet point suggests that for high value items such as a car – consumers should make sure they physically see it before sending money. Mr H had paid a deposit and was going to pay the remaining amount upon collection. So I don't think Mr H acted unreasonably here either.

Given the above, I don't think the warning First Direct provided meets the definition of an 'effective warning' as set out by the CRM Code. And I'm not satisfied that it can choose to decline reimbursement under this exception.

For completeness, I note First Direct has argued that Mr H had chosen the payment purpose 'Making a large purchase (e.g. house or car)' whereas the more applicable payment purpose would have been 'Buying goods and services'.

I don't consider Mr H choosing the payment purpose 'Making a large purchase' was an unreasonable thing to do – he was making a purchase and for what he considered was a large amount. Also, having looked at the warning for 'Buying goods and services', I'm not persuaded that it was an 'effective warning' either in the circumstances nor would it have had a material effect on preventing the scam. I say this because the warning:

- advises its customer to use a debit or credit card as it may offer more protection. But as I mentioned in relation to the 'Making a large purchase' warning, it isn't uncommon to use bank transfer as a method of payment for purchases.
- it then goes on to explain to only send money if you're sure the goods, service, person or business is genuine. Here Mr H was sure that he was making a legitimate payment to a legitimate seller.
- it then goes on to advise its customer to beware of false website and reviews and to thoroughly research the seller before making a purchase. Mr H had been in contact with the seller through an advert on a genuine website and had received documentation that to Mr H's mind confirmed he was dealing with a legitimate seller who had an animal welfare's licence – so I don't think this would have given Mr H any pause for thought.

- advises for high value items, to make sure the customer physically sees it before sending the money. Again, Mr H believed everything to be legitimate, was paying a deposit and was going to see the puppy in person before paying the remaining amount. So I can see why this would have had a material impact on preventing the scam.

Overall I am satisfied that under the CRM Code, First Direct hasn't established any of the permitted exceptions to reimbursement apply.

My final decision

For the reasons explained, I've decided it is fair and reasonable to uphold Mr and Mrs H's complaint about HSBC UK Bank Plc trading as first direct.

I therefore require HSBC UK Bank Plc trading as first direct to pay Mr and Mrs H:

- The balance of the money lost through this scam, being the sum of £700 less any sums already reimbursed or otherwise refunded; and,
- 8% simple interest per year on that amount calculated from the date HSBC UK Bank Plc trading as first direct originally declined Mr H's claim under the CRM Code until the date of settlement.

I direct HSBC UK Bank Plc trading as first direct to pay compensation, as set out above, within 28 days of receiving notification of Mr and Mrs H's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 12 January 2023.

Matthew Horner
Ombudsman