

## **The complaint**

Mr S complains HSBC UK Bank Plc, trading as first direct ("First Direct"), didn't reimburse the money he lost when he was the victim of an 'authorised push payment' ("APP") vehicle purchase scam.

## **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 S was the victim of a vehicle purchase scam.

Mr S was looking to purchase a motorhome for a family member who needed a place to live and fairly urgently. Mr S had never purchased a motorhome before and due to the urgency of the situation says he spent a couple of weeks looking. Mr S says had a budget of around £17,000 to £22,000.

Mr S said he saw a website for a company – whom I'll refer to as 'Company M'. Mr S has explained that Company M was one of the first websites to appear following an internet search. Mr S said the website appeared genuine and normal and had a decent number of motorhomes for sale.

He saw a motorhome that was within his budget and explained that he had also looked online at other websites, and the websites and the motorhomes available and prices all seemed similar – considering age, condition and size.

Mr S says he checked Companies House and Company M were listed, and he also saw they had a social media online presence that he said seemed friendly and useful.

Mr S contacted Company M about the motorhome he had seen. He says he received prompt communication from the seller (who was the director of the company) over email. An invoice was arranged with delivery for £19,000. Mr S paid the account details provided on the invoice.

When Mr S made the payment, he received a Confirmation of Payee 'no match' warning from First Direct. Mr S says he queried the account name with the seller who said it was fine and it was the correct account and that he had received payments that day.

Ultimately the seller didn't exist, and it was a fraudulent website that had been set up. So Mr S had been scammed and paid his funds to a fraudster for a motorhome that didn't exist.

Mr S, 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 S 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 S should be reimbursed for his losses under the 'Lending Standards Board Contingent Reimbursement Model Code' (the "CRM Code"). 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 S 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 S referred his complaint to our service. One of our Investigators looked into Mr S's complaint and thought it ought to be upheld. The investigator didn't believe First Direct had fairly assessed Mr S's claim under the CRM Code. They didn't think that First Direct had provided an effective warning prior to Mr S making the payment. And they didn't agree that First Direct had been able to establish Mr S made the payment without a reasonable basis for believing he was making a legitimate purchase from a legitimate seller. The Investigator also considered the payment was out of character and unusual given Mr S's account history and thought First Direct ought to have intervened to satisfy itself that Mr S wasn't at risk of financial harm, and it missed an opportunity to prevent the scam.

The Investigator recommended First Direct reimburse Mr S the funds he lost to the scam and pay additional compensation at 8% simple interest per year on that amount from the date of the loss until the date of settlement.

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 S'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 S lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- First Direct should in any event have intervened when Mr S was making the payment as the payment was unusual and out of character for Mr S and if it had done so, I am satisfied the fraud would have come to light and the loss prevented.
- In the circumstances First Direct should fairly and reasonably refund the money Mr S lost.
- The money was taken from the Mr S's current account. Mr S had cashed in an investment and had intended to use the money to purchase a motorhome. Mr S has therefore been deprived of the use of those funds. So First Direct should also pay interest on the money it should have refunded at 8% simple per year from the date Mr S made the payment until 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 S 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 S have a reasonable basis for belief when making the payment?*

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

Mr S carried out an internet search and Company M were one of the top searches. Importantly, Mr S hadn't been scammed before and didn't expect or want to be scammed. He wasn't aware that websites could be cloned or faked. Mr S saw a website selling motor homes and everything seemed legitimate, with Mr S advising that the website looked similar to other websites he had looked at. Company M were also listed on Companies House with the nature of its business described as "Sale of other motor vehicles". The director of the company matched with whom Mr S was in communication with.

To Mr S's mind everything seemed legitimate and normal, and I can see why. There were no obvious warning signs that things may not be all as they seemed. This was a sophisticated scam – with the website appearing like others, with Company M having a fair amount of motorhomes available and at prices that weren't dissimilar to other sellers / websites. Mr S says that around 25% (an estimate) of the motorhomes had a sale price, which he thought made sense given the time of year and it being the end of a holiday season. The price Mr S was paying also wasn't 'too good to be true' which can often be a sign that something might not be right.

Mr S also says Company M had an online social media presence which looked reassuring. And he received genuine looking communication through email from whom he thought was the director of the company and an invoice with logos of the company. So I can see why Mr S reasonably thought it was a legitimate website and company.

I appreciate that Mr S received a 'no match' Confirmation of Payee result when he made the payment – but I have to bear in mind that the name he had entered was not too dissimilar to that of Company M – and Mr S says the seller reassured him that it was the correct account details and that he had received payments into that account that day. Given Mr S genuinely thought it was a legitimate business I can see why he proceeded. And as I've said above, there were no other major red flags that, coupled with a 'no match' confirmation of payee warning, should have possibly put Mr S on alert that something wasn't right.

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

#### Did Mr S ignore an effective warning?

First Direct say that Mr S 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 S was liaising with whom he thought was a legitimate company (albeit it was a scammer) so I don't think this would have made Mr S 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 S was falling victim to. Here, Mr S was satisfied he was dealing with a legitimate company, so 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 S thought he was dealing with a legitimate company who sold motor homes – so I don't think this would have made Mr S stop and think. The warning here also doesn't give any possible steps Mr S could take to identify if a seller had falsified a website.
- 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. I do acknowledge that this can often lead to a scam being uncovered, but it isn't always possible to see a vehicle before purchasing it – and in more recent times the purchasing of vehicles has expanded to include delivery. So I don't think Mr S acted unreasonably, especially when I consider that Mr S was purchasing a slightly more niche vehicle from what he thought was a company that specialised in selling motorhomes.

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.

*Could First Direct have done more to prevent the scam?*

I am also mindful that when Mr S made this payment, First Direct should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud or financial harm.

The payment Mr S made was for a large amount and it was unusual and out of character for him. So, I think First Direct should have intervened and questioned Mr S about the payment further to ensure that he wasn't at risk of financial harm.

Mr S isn't an expert in matters relating to fraud nor had experience in purchasing vehicles. So, had he been asked the purpose of the payment – for a motorhome, First Direct would have been in a position to provide him with what to look out for in relation to vehicle purchase scams. It could have stressed the importance of seeing the vehicle or obtaining further detailed information about the vehicle such as documents (which Mr S thought was arriving with the motorhome) prior to making payment.

Importantly, I think that had Mr S been warned that fake companies and websites are set up and a common vehicle scam involves paying for a vehicle upfront with the promise for it to be delivered – and then for it not to arrive, Mr S would have taken steps to ensure he didn't fall victim to this type of scam. And I think it is reasonable to suggest that Mr S wouldn't have proceeded with the payment until he had carried out some further steps / checks and satisfied himself that everything was ok. So, I think an opportunity was missed by First Direct and the loss could have been prevented.

Overall I am satisfied that under the CRM Code, First Direct hasn't established any of the permitted exceptions to reimbursement apply. And I am also satisfied that First Direct could have done more to intervene on the payment which would have prevented the loss.

**My final decision**

For the reasons outlined above, I've decided it is fair and reasonable to uphold Mr S'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 S:

- The balance of the money lost through this scam, being the sum of £19,000 less any sums already reimbursed or otherwise refunded; and,
- 8% simple interest per year on that amount calculated from the date of loss (the date the payment was made) 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 S's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 January 2023.

Matthew Horner  
**Ombudsman**

