

The complaint

Mr and Mrs M complain about HSBC UK Bank Plc trading as First Direct.

They say that they have fallen victim to a scam and would like First Direct to refund them the money they have lost.

What happened

Mr and Mrs M approached a company I will refer to as G at a garden centre, where G had a store, and entered into an agreement with them to build a new kitchen for them.

Mr and Mrs M made two payments towards the kitchen of £2,500 and £13,600 – however, the kitchen was delayed, and ultimately failed to be built.

Mr and Mrs M say that G took their money with no intention of completing the project, and have therefore been the victims of a scam – and that they have been in contact with others who have also lost money to G. They would like First Direct to refund them the money they have lost as a result.

First Direct declined to refund Mr and Mrs M, they said that this was a civil dispute between Mr and Mrs M and G. Unhappy, Mr and Mrs M brought their complaint to this Service.

Our Investigator looked into the complaint and reviewed it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Having done so, they agreed it was more likely a civil dispute between Mr and Mrs M and G. On balance, they did not think the evidence showed G never intended to provide Mr and Mrs M with the kitchen they ordered. And instead, they felt it was more likely G had got into financial difficulty and become insolvent.

Mr and Mrs M asked for an Ombudsman to review the complaint, so it has been passed to me to make a final decision.

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.

It isn't in dispute that Mr and Mrs M authorised the payments in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transactions. But they say that they have been the victim of an authorised push payment (APP) scam.

First Direct has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

"This Code does not apply to:

- b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."*

I've therefore considered whether the payments Mr and Mrs M made to G fall under the scope of an APP scam as set out above. Having done so, I don't think that they do. I'll explain why in more detail.

I should start by saying that just because I don't think that G was operating as a scam, (and therefore First Direct don't need to refund them under the CRM code) that it does not mean Mr and Mrs M don't have legitimate reasons to be aggrieved by what has happened. I am very sorry that they have not received the kitchen that was promised, and have received very poor service from G. However, I think that this is a civil dispute between Mr and Mrs M and G.

I've set out the reasons I believe this to be a civil dispute, rather than a scam below;

- G has been incorporated as a business on Companies House since August 2018 – while there have been several 'strike-off' actions, all of these have been discontinued or suspended – and at present, although there are accounts overdue, there is no current strike-off action
- G had a physical presence at a garden centre, which although now closed would be unusual for a scammer to take up commercial premises (with associated costs) and be easily found by those who they had scammed
- While no work took place, G did provide Mr and Mrs M with drawings of the planned work, and kept in touch with Mr and Mrs M after the payments were made
- I have been provided with bank statements from G's bank, into which Mr and Mrs M made their payments. While I cannot disclose the full contents of what these statements contain, I can see that there were several payments made to suppliers of equipment which I would expect to see for a business of this type – although I cannot confirm if these payments were made in relation to the agreement that Mr and Mrs M entered into.
- It appears that after G got into financial difficulty, a new company 'M' was set up – which also provided kitchens. I understand that Mr and Mrs M found the owner of G at these premises. While I understand that this is frustrating, it is not uncommon for limited companies to start up again when a business has failed.

Overall, taking everything into account, on balance, I think that G was a legitimate company, that got into financial difficulty, and was not able to provide the services that it had been paid for, and I don't have enough evidence to say that G set out to deliberately deceive Mr and Mrs W at the point they made their payments.

And while I am aware that other customers have been refunded by their banks, I am unable to speculate as to why this may have been, I can only look at what happened in relation to this complaint.

I am very sorry for what has happened here, and I understand how upset Mr and Mrs M are about what has gone on, but I am unable to uphold this complaint, or ask First Direct to refund them.

It is possible that further evidence may come to light at a later date, which may indicate G was operating a scam. Should such evidence come to light, then Mr and Mrs M can complain to First Direct again, and refer the matter to this office, should they not be happy with the outcome.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 9 April 2025.

Claire Pugh
Ombudsman