

## The complaint

Mr P is unhappy that HSBC UK Bank Plc trading as first direct (First Direct) won't refund the money he lost after falling victim to a vehicle purchase scam.

Mr P has used a professional representative to bring this complaint to our service and they have made submissions on his behalf. For consistency, I'll refer to Mr P throughout.

## What happened

On 13 December 2023, I issued my provisional decision on this complaint. I wanted to give both sides a chance to provide any further evidence and arguments before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

### *What happened*

*Mr P was looking to purchase a vehicle on a well-known online selling platform and reviewed photos of one which met his requirements. The advertised price was £5,950.*

*Mr P contacted the seller by text message on 4 May 2022 and they discussed the condition of the vehicle by phone. Mr P recalls the seller was knowledgeable and answered all of his questions on the call. Unbeknown to Mr P, he was speaking to a fraudster.*

*Later the same day, Mr P made an online transfer of £5,950 to the account details the seller gave him. Mr P selected 'Making a large purchase (e.g. house or car)' as the payment purpose, which presented Mr P with a scam warning.*

*After the payment was made, the seller became slow to respond. Mr P then searched the vehicle registration online and found the vehicle was advertised by a garage. The garage told Mr P that the vehicle had been sold some months before and that Mr P was likely being scammed.*

*On 6 May, Mr P called First Direct to report it. However, by the end of the phone call, Mr P agreed he'd wait until he was due to collect the vehicle before proceeding with an official scam report. He reported it to First Direct again on 7 May, after the seller stopped responding altogether.*

*First Direct contacted the bank who received Mr P's funds later that evening and notified them of Mr P's claim. The receiving bank returned the 87p that remained in the beneficiary account and didn't accept any liability for Mr P's loss.*

*First Direct considered Mr P's claim under the Contingent Reimbursement Model (CRM) Code, which First Direct is a signatory of. It declined to refund Mr P because it said it gave Mr P an Effective Warning when he made the payment, and Mr P didn't take sufficient care before making the payment.*

*Mr P referred his complaint to our service and our Investigator upheld it. They thought that First Direct had not established that an exception to reimbursement fairly applied under the CRM Code, and so Mr P ought to be refunded in full.*

*Our Investigator initially didn't recommend any interest be awarded as Mr P's loss was funded with money borrowed from family. However, since the view was issued, new evidence came to light showing Mr P had repaid the funds to his family and so our Investigator told First Direct it should also pay 8% simple interest per year, from the date First Direct declined Mr P's claim until the date of reimbursement.*

*First Direct didn't accept our Investigator's recommendations. In summary it said:*

- Mr P was careless and didn't conduct checks or view the vehicle prior to payment.*
- He made the payment through an unsecure channel, outside of the selling platform which was against the selling platform's policy.*
- He dismissed the Effective Warning given by First Direct.*

*As no agreement could be reached, this case was passed to me for a decision to be issued.*

*What I've provisionally 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.*

*In doing so, 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.*

*It's not in dispute that Mr P made the payment to the fraudster himself. So, in accordance with the Payment Services Regulations 2017 (PSR 2017) Mr P is presumed liable for the loss in the first instance.*

*However, as I've already set out, First Direct is a signatory of the CRM Code. The starting position under the CRM Code is that First Direct ought to refund Mr P, unless it can establish an exception to reimbursement applies. Such exceptions to reimbursement include (as far as is relevant to this complaint) that Mr P:*

- Ignored an Effective Warning by failing to take appropriate actions in response to such an Effective Warning and/or*
- 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 the person or business with whom they transacted was legitimate*

*First Direct is relying on both exceptions to reimbursement. In this case, I think that First Direct can rely on one of those exceptions – that Mr P lacked a reasonable basis for believing that the payment was for genuine goods or services or that the person with whom he transacted was legitimate. I know this might be disappointing for Mr P, so I'll explain why.*

*Mr P says he checked the MOT history and tax status of the vehicle prior to paying. He's also provided evidence of a HPI check; although I'm mindful that when he reported the scam and First Direct asked what checks he completed before he paid, he didn't mention having completed a HPI check. Regardless, Mr P says these checks all came back with a satisfactory response.*

*Taking Mr P's testimony into account, I'd imagine that such checks would have likely given Mr P some indication of the vehicle's condition. He also says the seller told him that the vehicle was in 'good condition' in a phone call prior to the payment. However, in evidence submitted of text messages Mr P sent to the fraudster after he'd paid, he asked the seller 'Just out of interest, what was the van used for? Was the van used for carrying heavy stuff or towing large weights please?'. To me, this suggests Mr P didn't have a detailed conversation with the seller before he made the payment about the condition of the vehicle, or else these questions likely would have come up in the conversation.*

*The significance of the vehicle's condition is that it directly links to the advertised price of the vehicle (£5,950) which I think ought to have caused Mr P concern about the legitimacy of the sale. Mr P says most of the vehicles he'd seen online were selling for £6,000 so the price didn't concern him. Our Investigator also didn't consider this price to be too good to be true due to the vast price range on selling platforms depending on condition.*

*Mr P told our Investigator that he can't recall the mileage of the vehicle and the advertisement is no longer available. However in a call with First Direct on 6 May, Mr P said that the mileage tallied with the last MOT mileage recorded. I've completed an MOT history search of the vehicle and I can see the mileage was recorded as 68,626 miles as the most recent MOT prior to the scam. Using two independent vehicle valuation tools, I've obtained a valuation range of £12,075 and £13,860 using this mileage. I understand that other factors, such as the condition of the vehicle could sometimes explain why a vehicle was being sold for less than might be expected. Given Mr P claims to have had some understanding of the mileage and condition of the car, I think he ought to have questioned why the vehicle was being sold for less than 50% of what a vehicle of that description was worth. Mr P seems to have acknowledged this as after he made the payment, he asked the seller in a text message 'why is the van priced so well?'. Again the fact this question was asked after Mr P had made the payment, suggests this wasn't part of the conversation Mr P had with the seller prior to making the payment.*

*I can see why this low price likely would have enticed Mr P. But this can also be an indicator that something is not quite right about the seller or proposed deal being offered. I think the price was enough to have caused Mr P serious concerns about the legitimacy of the sale and in turn, the legitimacy of the seller, particularly as he hadn't seen the vehicle in person.*

*Mr P also confirmed in a call with First Direct on 6 May that the seller had only one review, which I don't think was enough to satisfy Mr P that the seller was legitimate. It's also unclear whether they had other items for sale. Mr P says he searched the seller's name on a social media platform and found a user by the same name, located in the same area as the seller, with what Mr P considered to be similar interests. However, this was an assumption from Mr P and did not by any means ensure the person with whom he transacted was legitimate or that they genuinely had the vehicle for sale in their possession. Mr P says he requested proof of ownership documentation in a phone call prior to paying. But the evidence shows me he asked for this by text after he had made the payment. Regardless, Mr P didn't receive any proof of ownership documentation prior to making the payment.*

*Taking these things into account, I'm afraid that I find Mr P lacked a reasonable basis for believing that the payment was for genuine goods or services or that the person with whom he transacted was legitimate. Therefore under the CRM Code he can be held at least partially liable for his loss.*

*But First Direct also has standards under the CRM Code it's expected to meet. Failure to do so in relation to a particular payment, or series of payments, could mean it's responsible for partially reimbursing its customer.*

*The CRM Code requires a firm to provide an Effective Warning where it identifies an APP scam risk in a payment journey. I'm persuaded there was enough going on for First Direct to have identified a scam risk when Mr P made the payment, as the value of the payment was significant in comparison to earlier activity on Mr P's account. Our investigator concluded the warning First Direct gave wasn't effective, and I'm inclined to agree.*

*The warning First Direct gave said:*

*"Caution – This could be a scam*

*Making a large purchase (e.g. house or car)*

*WARNING – If someone has told you to mislead us about the reason for your payment and/or choose the wrong payment type, stop, this is a scam.*

*Fraudsters may advertise on social media, online marketplaces and on websites that seem legitimate but have been set up to carry out fraud. They can also pretend to be a genuine business, access your emails or invoices and ask you to make a payment to [sic] different account or provide you with account details for a new payment.*

*What you need to do before making the payment:*

*stop and think – does this seem right? Is the offer for a limited time or too good to be true?*

*if you're contacted by email check the content and address, does it have any grammatical errors or unusual changes in font or format? Was [sic] sent from the company you expected? Is the sender's email address different, even by just one character?*

*check any changes like payment details by contacting the person or company using a phone number you've checked is genuine*

*beware of false websites and reviews and thoroughly research the seller online using trusted sources before sending any money*

*don't make the payment if you're asked to pay by bank transfer rather than using a more secure way e.g. a credit or debit card which gives you more protection against fraud*

*if you're paying for a high value item like a car, make sure you physically see it before making a payment.*

*Visit our Fraud Centre for more information on what you should check before making payments.*

*IMPORTANT: By choosing to continue, you agree you've read this warning, you're happy to proceed and that we may not be able to recover your payment if it's sent to a fraudster's account. If you have any doubts or concerns at all, please stop immediately."*

*First Direct is of the belief that by providing an electronic warning during the payment journey, it has met the requirement to take reasonable steps to provide Mr P with an Effective Warning. However, the CRM Code sets out minimum requirements for what makes*

*an Effective Warning; that being understandable, clear, impactful, timely and specific. So, for First Direct to meet the standards for firms, said warning must meet the minimum requirements set out in the CRM Code.*

*Like our Investigator, I've noted the warning is heavily text based which can be difficult to follow. Some of the points raised aren't relevant to purchase scams such as a notice about coaching, which is not often a common feature in such scams. It also attempts to cover other scam types such as invoice or email intercept scams. That's not to say that some of the advice within the warning wasn't relevant to Mr P's circumstances. However I can see why overall the warning didn't resonate with him, because it wasn't specific enough to purchase scams in order to be impactful. For the reasons I've explained, the warning doesn't meet the criteria set out in the CRM Code to be deemed an Effective Warning. Taking this into account, I'm not persuaded that First Direct has fairly established it met the standards for firms in accordance with SF1(2) of the CRM Code. And I've seen nothing to suggest an Effective Warning wouldn't have dissuaded Mr P from going ahead.*

*In accordance with ALL2(2)(b) of the CRM Code, where Mr P does not have a reasonable basis for belief and First Direct failed to provide an Effective Warning where one was due and would have had a material effect on preventing the scam that took place, the liability ought to be shared equally between the parties.*

#### *Recovery of funds*

*I've considered whether First Direct took appropriate and timely steps to notify the receiving bank of Mr P's claim, in line with the expectations under the CRM Code. Such expectations say that a sending bank should notify a receiving bank of an APP scam immediately. 'Immediately' isn't defined, but I think up to one hour would be considered reasonable.*

*Mr P contacted First Direct on 6 May as he suspected he'd been scammed, but First Direct didn't contact the receiving bank until Mr P called again the following day. So, I think it fell short of its expectations here.*

*In the call on 6 May, there was sufficient information available to First Direct to realise Mr P had most likely been scammed. After all he'd paid up front for a vehicle he hadn't seen and now had persuasive evidence the seller didn't have possession of it. Mr P, who is not the expert in fraud and scams, was unsure if he had a valid claim and sought advice from First Direct. But First Direct said it was up to Mr P and it didn't know what to advise. I think First Direct should have explained that from what he'd described, it was likely he'd been scammed. And it should have also explained any delays to raising the claim, could have a detrimental impact on recovery of funds, given Mr P asked about the consequences of delaying the claim.*

*Our investigator contacted the bank that received Mr P's funds to see when the funds were removed by the fraudster. It has provided evidence which shows that had First Direct contacted the receiving bank within an hour of Mr P first notifying it of the scam on 6 May, £69.50 remained out of Mr P's funds. I'm also satisfied from the evidence that the receiving bank would have had sufficient time to secure these funds.*

*First Direct hasn't met the standards for firms under the CRM Code in relation to recovery of funds, and the delay had an impact on the amount it was able to recover. And in accordance with the CRM Code, where First Direct has not met the standards for firms and Mr P also doesn't have a reasonable basis for belief, Mr P is entitled to a refund of 50% of his loss. As First Direct is already liable for 50% of Mr P's loss due to its failure to provide an Effective Warning, the failure to recover the funds doesn't impact the overall refund that is due.*

### *Putting things right*

*I've provisionally decided that First Direct should refund 50% of Mr P's outstanding loss as neither party have met their standards under the CRM Code.*

*Mr P borrowed the funds he lost from his family, but he's since provided evidence which shows he repaid the debt to them on 13 September 2022. So from this date, he's suffered a deprivation of funds which he otherwise wouldn't, had First Direct correctly refunded him when he first raised his claim. With this in mind, First Direct should fairly and reasonably pay 8% simple interest per year on the refund, from 13 September 2022 until the date he is refunded.*

### *My provisional decision*

*For the reasons I've explained above, I intend to uphold this complaint and tell HSBC UK Bank Plc trading as first direct to pay Mr P:*

- 50% of his outstanding loss which I calculate to be £2,974.57 (50% of [£5,950-£0.87])*
- 8% simple interest per year on the total refund amount, from 13 September 2022, until the date the outstanding loss is refunded, less any tax lawfully deductible.*

Both parties accepted my provisional decision and had nothing further to add.

### **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.

As both parties accepted my provisional decision and had nothing further to add, my final decision is unchanged from the provisional findings I've set out above.

### **My final decision**

For the reasons explained, I uphold this complaint about HSBC UK Bank Plc trading as first direct and instruct it to pay Mr P:

- 50% of his outstanding loss which I calculate to be £2,974.57
- 8% simple interest per year on the total refund amount, from 13 September 2022, until the date the outstanding loss is refunded, less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 9 February 2024.

Meghan Gilligan  
**Ombudsman**