

## **The complaint**

Mr R is unhappy HSBC UK Bank Plc, trading as first direct ('First Direct'), hasn't refunded him the money he lost after falling victim to an Authorised Push Payment ('APP') car purchase scam.

## **What happened**

The details of this case have been clearly set out by our Investigator. As such, the facts are well-known to both parties, so I don't need to repeat them at length here. In summary, Mr R fell victim to a car purchase scam.

In 2023, Mr R was looking to buy a car and found one online through a well-known social media website. Mr R contacted the seller, which was a company, that I'll refer to as 'Company A' and agreed a price of £2,000 for the car and a £125 delivery fee. Mr R received a contract and Company A's 'buy back guarantee'. Mr R agreed with the contract and then received details of where he should make the payment. On 10 August 2023, Mr R transferred £2,125 for the purchase and delivery of the car.

Sadly, the car never arrived, and Mr R quickly realised he had fallen victim to a scam.

Mr R contacted First Direct to report the matter and to see if it could recover or reimburse his funds.

First Direct subsequently contacted the Receiving Firm (the beneficiary bank where the funds had been sent to), but unfortunately no funds remained and so there was nothing to return to Mr R.

First Direct also considered whether Mr R was due a refund of the funds he lost. First Direct considered the case under the Lending Standards Board 'Contingent Reimbursement Model' ('referred to as the CRM Code') which it was a signatory of at the time of the payment.

The CRM Code required 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 R for the funds he had sent. It considered it had provided sufficient warnings when Mr R made the payment, and that Mr R could have taken more caution and carried out further checks.

Unhappy with First Direct's response, Mr R brought his complaint to this service. One of our Investigator's looked into things and initially thought First Direct should reimburse Mr R for 50% of the loss. They considered First Direct provided a warning when Mr R made the payment – but that warning was not an 'effective warning' as set out under the requirements of the CRM Code. But they considered that Mr R should share some responsibility for his loss also. They said this because they didn't think Mr R had a reasonable basis for believing that he was making a legitimate purchase from a legitimate seller. They considered the price of the vehicle was too good to be true in the main and ought to have given Mr R a cause for concern that all might not be as it seemed.

First Direct disagreed with the Investigators opinion and considered its warning was 'effective' and it shouldn't be liable for Mr R's loss.

The Investigator revisited their findings and having reviewed the payment Mr R made, changed their opinion. In short, they considered that while First Direct did provide a warning – the payment amount of £2,125 wasn't so remarkable to warrant First Direct identifying that Mr R was potentially at risk of financial harm whereby it would need to provide an 'effective warning' under the CRM Code. So, our Investigator concluded that under the CRM Code First Direct wasn't required to reimburse Mr R.

The Investigator also noted that while First Direct could have acted sooner than it did upon being notified of the APP scam by Mr R, the funds Mr R had sent, had been moved on almost instantaneously by the scammer (within a minute of Mr R sending them). So, despite the delay by First Direct in reaching out to the beneficiary bank – there wouldn't have been a chance to recover the funds in any event.

Mr R didn't agree with the Investigator's opinion. In summary, Mr R explained the Investigator had initially concluded that the payment he made did require an 'effective warning' to be given by First Direct as there was an APP scam risk. And the Investigator deemed First Direct's warning wasn't effective. So Mr R didn't understand how the Investigator could then conclude subsequently that First Direct didn't need to give a warning because the payment wasn't so remarkable to indicate an APP scam risk.

Mr R also considered he had carried out enough checks and believed it was a legitimate payment to a legitimate seller and he should be reimbursed in full.

As agreement couldn't be reached, the complaint has been passed to me for 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.

I'm sorry to disappoint Mr R, but I'm not upholding his complaint. I know he's been the victim of a cruel scam, and I don't doubt that these events have had a significant impact on him. But I don't believe First Direct has acted unfairly or unreasonably in not reimbursing Mr R under the provisions of the CRM Code. I'll explain why.

There's no dispute that Mr R authorised the payment that is the subject of this complaint, even though he did so as a result of being deceived by fraudsters. Broadly speaking, under the account terms and conditions and the Payment Service Regulations 2017, he would normally be liable for it. But that isn't the end of the story.

Where a customer has been the victim of a scam it may be appropriate for the bank to reimburse the customer, even though payments have been properly authorised. Of particular relevance to the question of what is fair and reasonable in this case is the CRM Code.

The CRM Code required firms to reimburse customers who have been the victims of APP scams like this, in all but a limited number of circumstances. Under the CRM Code, a Sending Firm may choose not to reimburse a customer if it can establish that\*:

- The customer ignored what the CRM Code refers to as an 'Effective Warning' by failing to take appropriate action in response to such an effective warning.

- The customer made payments without having 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.

*\*Further exceptions outlined in the CRM Code do not apply to this case.*

In this case, I think First Direct has been able to establish that it may choose not to reimburse Mr R under the terms of the CRM Code. I'm persuaded one of the listed exceptions to reimbursement under the provisions of the CRM Code applies.

I have taken into account all of the circumstances of this case, including the characteristics and complexity of the scam. Having done so, I think the concerns First Direct has raised about the legitimacy of the transaction Mr R made are enough to support its position that he didn't have a reasonable basis for believing the person or business with whom he transacted with was legitimate. I'll explain why.

In order to determine whether this exception to reimbursement applies, I must ask if Mr R made the payment he did whilst having a reasonable basis for belief that all was genuine. I'm afraid I don't find that's the case having considered the price / valuation of the car.

Having reviewed our Investigator's research and comments on this aspect – and considering the make, model, year and mileage, of the car in question – I agree that the price Mr R thought he was purchasing it for was significantly lower than what it typically cost. By all accounts it was undervalued by, not just hundreds of pounds, but a few thousand pounds. Mr R was purchasing a car for £2,000 and from what I have seen, similar make and models are listed for around £6,000+.

I also note that Mr R carried out a check on the car on 9 August 2023 – so prior to making the payment for the car, and he has provided evidence of that check and what it covered.

From looking at the check, I can see that there is a section that covers off the 'Vehicle Valuation'. This states the following approximate prices for the vehicle in question:

<i>On the Road</i>	<i>£14,465</i>
<i>Dealer Forecourt</i>	<i>£7,327</i>
<i>Private Average</i>	<i>£6,118</i>
<i>Part Exchange</i>	<i>£5,861</i>
<i>Auction</i>	<i>£4,754</i>

Mr R was told by Company A, that they had got the car through auction and that was why it was being sold for the price it was. But Mr R would have been aware that the price for this vehicle – even at auction value – was significantly higher. And Company A had advised that the car was in excellent condition. So, the car being sold for £2,000, ought to have given Mr R cause for concern that something might not be right.

The price or valuation of the car is an important factor here, as I find it should have given Mr R cause for concern that it may not have been a legitimate sale. I don't think a car sales business / seller would realistically sell a car for this much under the going retail value or even auction average. I think the price for the car was simply too good to be true from the outset and to such an extent that it ought to have raised more than a significant doubt on Mr R's part.

The price, including delivery, ought to have led to Mr R questioning whether all was as it seemed. I think it is reasonable to suggest that Mr R could have carried out some basic research on the typical cost of the same car / model and that he would have seen other car dealers / traders' websites and would have reasonably known the average price for a car of that model and specification – as indicated to him by the check he had already carried out. But it doesn't appear Mr R asked any questions around the price being what it was. So, I think the value of the car potentially posed a significant risk and that this should have led to sufficient checks being carried out to ensure that it was a legitimate sale and that the car actually existed.

I also note, Mr R was asked to make the payment and the account details weren't in the name of Company A, but another company ('Company G'). I do appreciate that Mr R sense checked this with Company A – and was told that it was one of the other business accounts it had. But it was another warning sign over the potential legitimacy or professionalism of Company A. I note that our Investigator identified that Company G shows as being dissolved at the time Mr R was making the payment. Given the price being too good to be true – and had Mr R acted with far more caution which to my mind he reasonably should have – then there was potential for him to carry out some more checks or question things further before proceeding. And I think it is fair to say he would reasonably have uncovered that things might not have been genuine.

Overall, I think there were some warning signs here, and Mr R needed to approach the purchase with considerable caution to ensure that the vehicle actually existed and that he was dealing with a legitimate seller.

So, I think First Direct can fairly rely on one of the exceptions to reimbursement – that Mr R made the payment without a reasonable basis for believing that the seller was legitimate.

#### *Should First Direct have done anything else to prevent the scam?*

Good industry practice requires that regulated firms such as First Direct engage in the monitoring of customer accounts and to be on the lookout for suspicious or out of character transactions with an aim of preventing fraud and protecting customers from financial harm.

And under the CRM Code, where it identified a risk of a customer falling victim to an APP scam, it was required to provide that customer with an 'effective warning'.

First Direct in its submissions to this service has advised the payment wasn't so out of the ordinary so as to trigger extra intervention. But it felt the warning provided was also an 'effective warning'.

We now know, with the benefit of hindsight, that Mr R was falling victim to a scam. But based on the information that was available to it at the time, I don't consider First Direct would've had any reasonable basis for believing that its customer was falling victim to an APP scam at the time the payment was made. So, when considering the CRM Code, it wasn't required to provide its customer with an 'effective warning' – as defined by the CRM Code. I say this because I don't consider the payment appeared so out of character or unusual – and neither did First Direct at the time – and the payment wasn't particularly large or remarkable.

First Direct did provide a warning, and that warning does not, in my view, meet the definition of an 'effective warning' under the CRM Code. But given that I don't consider First Direct was required to provide an 'effective warning' in the circumstances of this case, I can't fairly or reasonably conclude that First Direct hasn't met its obligations under the CRM Code. And the warning shown was proportionate to the risk the payment presented, and I wouldn't have expected it to have done anymore.

Also, I'm not persuaded it would've had any grounds for intervening to question the payment any further with Mr R, such as through human intervention, before allowing it to be processed. So, I can't fairly say it would have been able to prevent Mr R's loss.

### Recovery of funds

I have also considered whether First Direct did all it could to try and recover the money Mr R lost. Unfortunately, it is common for fraudsters to withdraw or move the money on as quickly as possible. And here, while First Direct could have acted sooner than it did, I am mindful the funds had been moved on from the beneficiary account instantaneously. So, it wouldn't have been able to recover Mr R's funds in any event.

### Summary

With all of this in mind, I am sorry that Mr R lost his money this way and fell victim to a cruel scam and is out of pocket as a result. And I don't underestimate his strength of feeling and why he thinks this money should be returned. But for the reasons explained, I don't find that he had a reasonable basis for believing the payment was for genuine goods or services; and/or the person or business with whom he transacted was legitimate. So, I don't consider First Direct has acted unfairly or unreasonably in not reimbursing Mr R under the provisions of the CRM Code. And it isn't liable for the loss as a result of any other failings here either, as I don't find it could have reasonably prevented his loss, or recovered the funds, as they had already been moved on instantly.

### **My final decision**

For the reasons give above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 April 2025.

Matthew Horner  
**Ombudsman**