

## **The complaint**

Miss I complains that HSBC UK Bank Plc trading as first direct bank ('first direct') won't refund money she paid for an investment.

## **What happened**

Miss I says that she was introduced to an investment opportunity with a company I'll call H in this decision in early 2018. H was a private rental development company which offered loan notes to investors to raise money for its projects. Miss I was advised returns were guaranteed.

In February 2018 Miss I transferred £10,000 to H. She initially received the returns she expected, but in 2019 this stopped. Miss I later found out that H entered administration in January 2022 and compulsory liquidation the following year. She believes H was operating a sophisticated scam and always intended to defraud her and numerous other investors.

Miss I's representative sent a letter of complaint to first direct in November 2023 asking it to reimburse her lost funds.

First direct noted that the transaction to H was made before the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code') came into force and that Miss I had a civil dispute with H.

Miss I didn't agree with first direct's response and brought a complaint to this service through her professional representative. Miss I explained why she feels she is the victim of a scam and went on to say that first direct should have identified that she was at risk of fraud and completed additional checks before processing the payment. At the time the payment was made, Miss I says first direct should have requested copy correspondence between her and H and considered the delay in H filing accounts.

Miss I says first direct should reimburse her in full, pay interest, and £1,000 compensation to reflect the trouble and upset she experienced in pursuing her complaint and first direct's poor service.

### *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. She explained why she thought Miss I had a civil dispute with H. This service has also explained our approach to cases not caught by the CRM Code in terms of intervention and whether it would have made a difference.

Miss I didn't agree with the investigator's findings and asked for a review by an ombudsman, so her complaint has been passed to me to decide. She asked me to review the following points:

- The investigator failed to properly consider the PAS Code, which Miss I set out. She said first direct should have recognised the transaction to H was suspicious and asked Miss I for more information about it.
- The investigator failed to give adequate weight to the information provided to demonstrate that H was operating a Ponzi scheme.
- Miss I was vulnerable at the time so should be reimbursed in full.

- The loss of her funds has had a huge impact on her health and finances.

### **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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

The payment of £10,000 in February 2018 pre-dated the inception of the CRM Code. At the time, first direct should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

After reviewing Miss I's bank statements for the twelve month period before the transaction was made, I consider first direct ought to have asked some questions about the purpose of the payment and provided scam education. In the year prior to the transfer, Miss I had made transfers of similar values between accounts, but the highest value transfer to a third party was for £4,500. The payment to H was over double this value and Miss I was paying a new payee.

I can't fairly require first direct to reimburse Miss I solely on the basis it didn't intervene when I think it should have though. I need to go on to consider what is most likely to have happened if first direct had asked the kind of questions I think it should have in February 2018. In deciding this point, I need to consider what was known about H at the time, rather than information that has subsequently come to light.

At the time Miss I made the payment, H was a legitimate registered company, other investors were receiving returns, and Miss I was given legitimate looking literature. And there was nothing in the public domain at the time to suggest there were any issues with H. The concerns Miss I has raised with this service about H have come to light after this transaction was made and after a detailed analysis of how H operated. So, I'm not satisfied that if first direct asked Miss I questions about the investment at the time she made the payment, it would have raised any concerns or that the payment wouldn't have been made.

Miss I's representative said that first direct should have looked at the documentation provided to her and considered H's delay in filing accounts. Whilst first direct may have checked that Miss I had documents that looked legitimate, I certainly wouldn't have expected it to read and analyse the full detail or to check that accounts had been filed. Such steps go beyond what I would expect of a bank in fulfilling its obligations to a customer.

As Miss I's complaint pre dates the CRM Code, it is unnecessary for me to consider whether it applies and, if so, its provisions in respect of vulnerability. Miss I hasn't suggested she made first direct aware she was having difficulties in 2018 or that she asked for any additional support.

Overall, whilst I'm sorry to hear about Miss I's loss, I can't reasonably ask first direct to reimburse her.

**My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 25 November 2024.

Jay Hadfield  
**Ombudsman**