

## **The complaint**

Mrs B complains that HSBC UK Bank Plc trading as first direct ('First Direct') won't refund the money she says was lost as the result of a scam.

## **What happened**

In July 2023, Mrs B wanted work completed on the gutters and fascia on her home. Mrs B had previously talked to a company who I'll refer to as R. She didn't have the contact details for R anymore, so she went online and found a contact phone number. Mrs B called the phone number, and a person came out to her property who I'll refer to as M.

Mrs B says M gave them a quote for the work, which was in line with what they expected, and they agreed the work to be done. The invoice Mrs B was given had R's name and logo, but included an email address with a different company name, I'll refer to that other company as S.

Mrs B made a number of payments to M, including a payment of £7,500 from her First Direct account on 13 July 2023.

Mrs B says:

- M misrepresented himself as working for R.
- He showed fake photos of dry rot and convinced her that her entire roof needed to be replaced.
- The work that he did complete wasn't of an acceptable standard.
- He left the job unfinished, and Mrs B has had to pay another company to finish and repair M's work.

Mrs B raised a fraud claim with First Direct in November 2023, through a professional representative. First Direct declined to refund Mrs B under the Contingent Reimbursement Model Code (CRM Code), saying Mrs B has a civil dispute with M as work was completed.

Mrs B wasn't happy with First Direct's response, so she brought a complaint to our service.

An investigator looked into Mrs B's complaint but didn't recommend that First Direct refund her. The investigator wasn't satisfied that M had taken Mrs B's funds with a different purpose in mind, and said she has a civil dispute which isn't covered by the CRM Code. And, if First Direct had intervened when Mrs B made the payment, the investigator didn't believe it would've prevented Mrs B's loss.

Mrs B disagreed with the investigator's opinion and raised the following points:

- M misrepresented himself as working for R, used fake photos and recommended work that wasn't needed in replacing their roof.
- Payments were directed to M's personal account.

- After receiving payment, M cut off all contact and failed to perform the promised work.
- M has previous convictions for fraudulent activity including targeting elderly individuals.

Mrs B provided links to three separate online articles about M and asked for an ombudsman to review her case.

### **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 really sorry to disappoint Mrs B, but having carefully reviewed the evidence, I've reached the same answer as the investigator. I'll explain why.

In deciding what's fair and reasonable in all the circumstances of a complaint, 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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position at law is that a bank such as First Direct are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

I accept that Mrs B has suffered a financial loss, but I'm not making a finding as to whether M owes her money. Rather, I'm deciding whether First Direct can fairly be held liable for that loss.

### **Is Mrs B entitled to a refund under the CRM Code?**

First Direct have signed up to the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code does not apply to private civil disputes, for example 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.

The CRM Code defines what is considered an APP scam as, "*where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent*".

In order to decide whether the circumstances under which Mrs B made her payment meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mrs B thought this purpose was legitimate.

- The purpose M had in mind at the time of the payment and whether this was broadly in line with what Mrs B understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mrs B was making a payment to M for building work. I haven't seen anything that suggests Mrs B didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose M had in mind and whether it was in line with what Mrs B thought.

In reaching an answer on what purpose M had in mind, the key information is:

- Mrs B found M by looking online for contact information for R. So, this isn't a situation where Mrs B was specifically targeted by M. While M has used R's logo and name on the invoice, he has also used the email address of a company (S) who he is the director of. S is a UK incorporated company set up in 2022, which is involved in roofing activities. It's unclear why M used R's name, but this misrepresentation isn't sufficient to say that M took Mrs B's payments with a different purpose in mind. Especially as a significant amount of work was completed.
- We've received information from the receiving bank that I can't share due to data protection issues. But this doesn't evidence that Mrs B's funds weren't used for their intended purpose.
- It's possible that M has experienced a change in their personal circumstances which has meant that there were financial difficulties – which could account for why M's company (S) was dissolved in March 2024.
- We don't have any evidence from the police or Trading Standards which points to M's intentions at the point Mrs B made her payment. The online articles that Mrs B has provided are from over 10 years ago (2006 and 2012), and don't evidence M's intentions at the time Mrs B made her payment in July 2023.

Taking all of these points into consideration as a whole, I'm not satisfied that I can fairly say M took Mrs B's funds with a different purpose in mind. A significant amount of work was done on Mrs B's property, although I appreciate it wasn't finished and Mrs B wasn't happy with the quality of the work that was completed. But this fits more with Mrs B having a civil dispute with M, rather than it being an APP scam.

Based on the evidence, I'm not satisfied that the circumstances under which Mrs B made the payment meets the definition of an APP scam under the CRM Code. So, I can't fairly hold First Direct liable under the CRM Code.

It's possible that material new evidence may come to light at a later date, for example from Trading Standards or the police. If that happens, Mrs B can ask First Direct to reconsider her claim.

Is there any other reason I can ask First Direct to reimburse Mrs B?

There is an expectation for First Direct to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. Where potential fraud is identified, I would expect First Direct to intervene and attempt to prevent losses for the customer.

I'm not satisfied that First Direct should've intervened when Mrs B made this payment, based on her making similar sized payments previously. But, even if I said they should've intervened, it wouldn't change the outcome. I say this as I'm not satisfied that any questions First Direct would've asked should've concerned them that Mrs B may be at risk of financial harm. M had attended the property and building work had started. So, I think it's unlikely that Mrs B would've said anything that meant First Direct shouldn't have followed her payment instructions.

I'm sorry that Mrs B has suffered a financial loss, but I'm not satisfied that I can fairly hold First Direct liable for her loss or ask them to refund her.

### **My final decision**

My final decision is that I don't uphold this complaint against HSBC UK Bank Plc trading as first direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 11 April 2025.

Lisa Lowe  
**Ombudsman**