

The complaint

Mr H is unhappy that HSBC UK Bank Plc (trading as First Direct) has decided not to refund him after he says he was the victim of a scam.

Mr H is bringing his complaint via a professional representative, I'll refer to them as J.

What happened

Mr H decided to invest with A after seeing advert on social media. At the time A was a public limited company but later became a private limited company. At the time Mr H invested A offered a listed bond with fixed rate returns from 4.5% up to 8.9% per annum listed on the Euronext Dublin, previously known as the Irish Stock Exchange. It claimed funds were secured against UK property, as loans, with legal charges over the assets. A's brochure mentions the risks involved in this type of investment and strongly recommends investors consult a qualified financial adviser. It explained A was not regulated by the FCA, but it had used a regulated firm to approve its marketing literature. The documents explain the securities listed under the bond programme were not covered by the FSCS.

Mr H transferred £9,999.74 across three separate transactions between November 2019 and January 2021. Mr H completed a form to carry out an ISA transfer to a L – an FCA authorised firm in November 2019. Mr H says the maturity of this bond was expected in 2022. In January 2021 Mr H completed £5,000 of payments made via an intermediary – I'll refer to as N – N was authorised by the FCA. Mr H says the maturity of this bond was expected in 2024.

Mr H says that after shares were issued in March 2022 A published its accounts showing a substantial deficit. From its Companies House records, it can be seen that in its strategic report for the year ended 31 March 2022 A proposed a debt-to-equity swap and changes to its overall business model. And it converted £22m to 28m shares. Mr H received documentation from A to convert his bonds held, into shares, which he did in December 2022. A received a court order to wind up in November 2024 and A is currently in liquidation but no report has been publicly issued by the liquidator to date.

Mr H raised a scam claim with First Direct in January 2024. And J claims A, is now widely accepted as having operated as a scam.

First Direct said the ISA transfer In November 2019 was made to a legitimate company. And it deemed this payment was part of a civil dispute, rather than a scam.

First Direct said it intervened with the payment made in January 2021 and discussed this with Mr H. He said it was going to an account in his name. He said he'd made a £1 payment the day before, which arrived at the destination. Mr H was asked if the payment was genuine which he said it was.

First Direct concluded this payment was made to N which at the time was an FCA authorised firm and the matter was therefore a civil dispute. It advised that Mr H contact the liquidators to recover any funds as part of the liquidation process.

Mr H is also seeking £1,000 in compensation for the considerable trouble and upset caused in the pursuit of his scam claim.

One of our investigators looked into Mr H's complaint. He concluded that there wasn't sufficient or persuasive evidence, that Mr H had been the victim of an authorised push payment scam, that met the definition within the CRM Code. He said, if any new material evidence came to light to establish that A had conducted a scam at the point Mr H made his payment, then he could ask First Direct to reconsider his claim.

He also considered, that even if First Direct had intervened with the payments, proportionate questioning wouldn't have likely identified any cause for concern, about the payments Mr H was making. Or that intervention would have resulted in Mr H not going ahead with the payments.

J requested the complaint be reviewed by an ombudsman. In summary it said:

- If Mr H had understood his funds were being used to raise funds for struggling companies he would not have been satisfied. Mr H was relying on the regulated status of the firm/intermediary he was paying.
- The bank's duty is to do everything possible and go through all the security checks to ensure that a client does in fact want to make the transactions. First Direct did not action on their promises of protecting their customers, there were no calls, texts or emails trying to stop the transactions. If it had followed its own guidelines Mr H may have reconsidered pursuing the transaction.
- J has added that Mr H was a vulnerable customer and has provided a description of his ailments and conditions. And detailed that he made the investment as part of his pension plan. And J has described the impact that the scam and loss of funds has had on Mr H.

As the complaint couldn't be resolved it's been passed to me consider.

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've come to the same conclusions as the investigator for the same reasons. I know that this will come as a disappointment to Mr H but I'll explain my reasons below.

I'm sorry that Mr H has lost a significant sum of money as a result of this investment. And that this has taken a toll on his well-being and health. But this is a complaint against First Direct, not A or the other linked companies in this investment. And I can only assess First Direct's liability based within the law, rules and industry guidance and what I consider to be fair and reasonable.

Firstly, not all failed investments are as the result of an authorised push payment (APP) scam. And, in order for First Direct to be liable to refund Mr H, then I need to be satisfied that he has been the victim of an APP scam, when applying the Contingent Reimbursement Model (CRM) Code and other relevant industry guidance in deciding the outcome of this complaint.

That's not to take away that Mr H hasn't suffered a loss. But it's important to note that I am not deciding a dispute between A and Mr H – I don't have the power to look into a complaint about that company. My role is limited to deciding the dispute between Mr H and First Direct based on the information I have access to, or has been provided by the parties to the

complaint. I need to decide whether First Direct acted fairly, when concluding that this amounted to a civil dispute and not an APP scam. I'm satisfied that it did, and I'll explain why below.

In order to be persuaded on balance that Mr H has been the victim of an APP scam I need to look to the definitions set out in the CRM code. At

DS1(2)

Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.

DS2(2) 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;

In summary, in order for the consumer to have been the victim of an APP scam, the consumer must have been deceived, about the very purpose for which their payment has been procured.

In this instance I haven't seen persuasive evidence that the purpose the recipient (A) had in mind, at the time of the payments, was different to what Mr H understood to be the purpose of the payments. i.e. Mr H hasn't provided any evidence that A did not use his money in the way it was agreed.

A was incorporated in 2016. It appears to have filed accounts for a number of years before Mr H invested. It had many reviews, for a number of years, suggesting investors were receiving returns, in line with their investment agreements. And when A proposed a debt-to-equity swap Mr H received the paperwork to convert his bonds into shares. It was only when A entered into liquidation that he raised a scam claim with First Direct.

Although A is now in liquidation and some investors/creditors (including Mr H) didn't receive what they paid for, or their contracts were not fulfilled, this does not evidence that A intended to defraud investors from the outset. And given A's apparent genuine status, I would need to see convincing evidence that A was more than a failed business to be satisfied that Mr H was the victim of an APP scam.

I appreciate that Mr H paid A and didn't receive what he expected in return. But non-receipt of the goods or services, in and of itself, does not automatically mean he has been the victim of an APP scam. I've not seen persuasive evidence that A was intended to defraud Mr H from the outset. Instead, Mr H's losses could be explained by a high-risk investment with a company that entered into financial difficulty and failed to recover from this.

That's not to say that Mr H couldn't raise a new scam claim if new material evidence came to light. But I have to base my decision on the evidence that's currently available to me.

J has raised other points to the complaint. It said First Direct has a duty “*to do everything possible and go through all the security checks to ensure that a client does in fact want to make the transactions*”. I don’t agree with this statement. Good industry guidance and the CRM code both say that firms should be on the lookout for scams and identify when consumers might be at risk of fraud or a scam and intervene proportionately. That doesn’t translate into firms having to intervene with every payment its customers make from their accounts.

From the notes First Direct has provided, it said it intervened with the last payment Mr H made. But I don’t propose to investigate that particular intervention further, as, like the investigator, I’m satisfied that Mr H was aware of the risks he was taking. I say this because, the literature from A advised him; the investment was high-risk, he should seek independent financial advice, and his investment was not regulated and therefore would not be protected by the FSCS. So even if First Direct could have provided a better warning or intervention, I’m not persuaded it would have had any impact on Mr H’s decision making. First Direct aren’t required to give investment advice only to warn consumers about the risks associated with investment scams. And I’ve not seen that First Direct could have directed Mr H to any checks, that would have revealed anything he didn’t already know about the investment he was making.

Our role here is to look at complaints impartially to decide what is fair in reasonable in all the circumstances of the complaint. Overall, there is not persuasive evidence that the investment with A set out to scam, Mr H (and others) and so I’m satisfied that First Direct was correct in its application of the CRM code here and doesn’t need to refund F’s losses.

I’ve also considered if there was any other reason why First Direct would need to refund Mr H and I haven’t found any. And as I consider that First Direct hasn’t made an error in its consideration of Mr H’s claim I do not recommend that it needs to pay any compensation either.

My final decision

I don’t uphold Mr H’s complaint against HSBC Bank UK Plc.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 25 June 2025.

Sophia Smith
Ombudsman