

The complaint

Ms M 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 February 2020 and October 2020, Ms M invested with a company I'll refer to as H.

Ms M says she found out about the investment through unsolicited contact. She was given promotional material about the investment options and decided to invest £20,000 in a 3 year Loan Note which offered 15% per annum. And another £15,000 was invested in a Fixed Return Loan Agreement which also offered a return of 15%.

The payments Ms M made from her First Direct account are as follows:

Date	Details of transaction	Amount
13.2.2020	Payment to H1	£15,000
9.10.2020	Payment to H2	£10,000
11.10.2020	Payment to H2	£10,000

After investing, Ms M didn't receive the expected bi-annual returns. In 2022, Ms M became aware that administrators were appointed.

Ms M raised a fraud claim with First Direct in October 2023, through a professional representative.

First Direct considered Ms M's fraud claim but declined to refund her. First Direct said Ms M has a civil dispute with H.

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

An investigator looked into Ms M's complaint but didn't uphold it. The investigator said the evidence doesn't show that Ms M's money wasn't used for the intended purpose or that H took the payment intending to scam Ms M.

Ms M disagreed with the investigator's opinion and asked for an ombudsman to review her case. Ms M says she was vulnerable at the time she made the payments and wholly inexperienced in the property opportunities put forward by H. She has also shared links to a number of articles relating to H, its directors or linked companies.

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 hear about the serious impact the loss of this money has had on Ms M both financially and health wise. I realise that Ms M will be very disappointed, but having carefully reviewed all of the evidence, I've reached the same answer as the investigator and for the same reasons.

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 in law is that First Direct are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

Is Ms M entitled to a refund under the CRM Code?

First Direct are a signatory of 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 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 Ms M made the payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Ms M thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments and whether this was broadly in line with what Ms M 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.

Ms M was making payments to invest with H, who were a property development company. I haven't seen anything that would suggest that Ms M didn't think this was legitimate.

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

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H, its directors and any linked businesses. The key information to this case is:

- H completed on three separate developments. It also had other developments it was working on, which it sold to developers after experiencing financial difficulties. This persuades me that H were operating a genuine business at the time Ms M made her payments.
- One of the investments Ms M made, related to a specific development - A. From what I've seen H sold the project to another developer. There isn't any evidence to suggest that H had no intention of developing this site, or that it took Ms M's money for a different purpose.
- I haven't seen any evidence that investors funds weren't used for the intended purpose, or that the company was operating a ponzi scheme. There has been

suggestion that this is the case by Ms M. But I haven't seen evidence that supports this, for example, from the liquidator.

- I appreciate that H have gone into administration. But a failed firm or investment, in and of itself, isn't sufficient to establish that the business, or those operating it, had a different purpose for the funds when they were obtained from the consumer.
- I appreciate that all communication with investor's stopped, and that Ms M didn't receive either returns or her capital back. But this doesn't prove that H took her money with a different purpose in mind.

Taking all of these points into consideration as a whole, I'm not satisfied that there is sufficient evidence to say Ms M's funds weren't used in the manner agreed by H or that the purpose H had in mind was different to Ms M's. On that basis, I'm not satisfied that I can fairly conclude that Ms M's payments meet the definition of an APP scam as set out in the CRM Code, and I can't fairly ask First Direct to refund her under the CRM Code.

Is there any other reason I could ask First Direct to refund Ms M?

Having reviewed Ms M's statements, I'm satisfied that the payments she made were unusual and out of character. I can see that she'd made a £5,000 payment shortly before her first payment to H, but this wasn't typical of the activity on Ms M's account.

However, even if First Direct had intervened, I'm not satisfied that it could've prevented Ms M's loss. I say this as all the information that was available to Ms M at the time she made the payments, suggested that H was a legitimate property developer. Ms M received professional documentation and marketing material and there wasn't any information available in 2020 to suggest H weren't operating legitimately.

So, I don't think questioning by First Direct would've identified any concerns about the payments Ms M was making.

If material new information comes to light at a later date, Ms M can ask First Direct to reconsider her claim.

I'm really sorry to disappoint Ms M, 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 Ms M to accept or reject my decision before 8 January 2025.

Lisa Lowe
Ombudsman