

The complaint

Mr F and Miss S complain that HSBC UK Bank Plc trading as first direct (“First Direct”) won’t refund a payment they made as part of a scam.

What happened

The background to this complaint is well known to both parties, so I won’t repeat it in detail here. But in summary, I understand it to be as follows.

Mr F became aware of an investment opportunity in a property development company who were offering loan notes to investors to raise funds for its projects. This company is further referred to as ‘Company A’.

Company A would sell and rent its assets to consumers, which would generate income which would pay back investors’ principal sum and interest.

Mr F and Miss S reviewed the information and documentation they’d received from Company A and, satisfied with what they’d seen, made a payment of £60,000 to Company A in September 2019.

In March 2024, Mr F and Miss S raised a formal complaint with First Direct and requested a refund of their payment as they believed they were the victims of a scam.

First Direct investigated the matter but deemed it to be a civil dispute. In their final response letter to Mr F and Miss S, First Direct explained that the payment was made to a legitimate business and there wasn’t enough information to show that Company A had any intention of scamming them.

Unhappy with this response, Mr F and Miss S referred their complaint to our service through a professional representative.

An investigator looked into Mr F and Miss S’s complaint but didn’t uphold it. The investigator said that they didn’t think there was sufficient evidence to demonstrate Mr F and Miss S had fallen victim to a scam and First Direct weren’t liable to refund them.

Mr F and Miss S and their representative provided a substantial response detailing why they disagreed with the investigator’s findings.

As the complaint couldn’t be resolved by the investigator it was been passed to me for a decision.

What I’ve decided – and why

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Mr F and Miss S have provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Mr F and Miss S's complaint. This is not meant to be a discourtesy to Mr F and Miss S and I want to assure them I have considered everything they've submitted carefully.

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.

In broad terms, the starting position at law is that a bank such as First Direct is 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.

First Direct are a signatory of the Contingent Reimbursement Model (CRM) Code which requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances.

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: *"another person for what they believed were legitimate purposes but which were in fact fraudulent."*

The Code also explains that it does not apply to *'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 order to reach my decision on this complaint, I've considered the purpose for which Mr F and Miss S made, and Company A received, their payment. And, if there is a significant difference in these purposes, whether I can be satisfied that this difference was as a result of dishonest deception.

It's clear that Mr F and Miss S made the payment as part of a property investment. So, I've gone on to consider what purpose Company A had in mind and whether that was in line with the purpose Mr F and Miss S made the payment.

In reaching an answer on what purpose Company A had in mind, the key information I've considered is as follows:

- Company A had completed three large property developments prior to Mr F and Miss S's investment. This shows that Company A were genuinely and legitimately operating for some time prior to the payment in question. The evidence provided by Mr F and Miss S also shows numerous other properties and developments Company A owned at the time they appeared to have entered financial difficulty. This leads me to believe that Company A were operating legitimately at the time of the payment.
- Many of the allegations made by Mr F and Miss S relate to Company A not using their funds in line with their intended purpose and that Company A were operating a Ponzi scheme. I've not seen evidence from the administrators of Company A which suggests they were operating a Ponzi scheme. Furthermore, and importantly, the

evidence provided by Mr F and Miss S doesn't sufficiently demonstrate that the payment was used by Company A for reasons other than the agreed purpose.

- Company A may have made some misrepresentations about the investment and failed to disclose the commission rates being paid to introducers, but this doesn't mean their actions meet the CRM Code's definition of an APP scam. Instead, it could be that they were simply exhibiting poor business practices and maintained the intention of paying out on the investments.

Allegations have been made by Mr F and Miss S that the directors of Company A, and other linked individuals, deliberately set out to defraud investors and unjustly enrich themselves. To date, Mr F and Miss S haven't provided evidence to satisfy me that this is the case.

I have every sympathy for Mr F and Miss S as they have lost a substantial amount of money. But, many businesses and investments fail and enter administration for genuine reasons, and not because they were set up to defraud and scam people. I believe that to be the case in this instance.

Ultimately, Mr F and Miss S made a payment towards a property investment and the evidence presented to our service doesn't sufficiently demonstrate that Company A didn't have the intention of carrying out and completing the investment. Because of this, I'm not satisfied that Mr F and Miss S's claim meets the CRM Code's definition of an APP scam. Lastly, I've considered whether First Direct could've done any more at the time of the payment in order to prevent Mr F and Miss S's loss.

Mr F called First Direct and made the payment in question over the telephone. Having listened to the call, no fraud or scam warnings were given to Mr F. But, even if First Direct had asked relevant questions, I don't think the answers Mr F would've given to any questions asked by First Direct would've suggested that he might be at risk of financial harm. This is based on the information available about Company A at the time of the payment. So, I can't fairly say First Direct could've prevented Mr F and Miss S's loss.

Overall, I'm not persuaded that Mr F and Miss S have fallen victim to an APP scam, based on the evidence available. Should any material new evidence come to light at a later date, for example from the police or the administrators, Mr F and Miss S can ask First Direct to reconsider their claim.

I appreciate this will be disappointing to Mr F and Miss S, given the impact this situation has had on them, but I'm unable to say that First Direct are liable to reimburse their loss.

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 Mr F and Ms S to accept or reject my decision before 9 July 2025.

Billy Wyatt
Ombudsman