

The complaint

Mrs O 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 August 2019, Mrs O heard a radio advertisement for an investment with a company I'll refer to as B. Mrs O says the advert boasted a 100% no default on investment pay-outs.

Mrs O visited B's offices and spoke to staff and directors, spoke with previous customers of B's, reviewed their website and checked online reviews.

B would purchase cars with investors funds, then lease the cars out to individuals who might not otherwise be able to access a leased vehicle. Mrs O was told she would receive a monthly return and, on maturity, a lump sum of capital and interest.

Mrs O decided to invest and made a payment of £56,000 in August 2019.

Mrs O received monthly returns between September 2019 and January 2021, of £1069.44 per month – receiving a total of £18,180.48.

In March 2021, B went into administration.

Mrs O didn't receive any further monthly returns or the lump sum payable on maturity. Mrs O believes the investment was a scam, and through a professional representative, raised a fraud claim with First Direct in June 2023.

First Direct investigated Mrs O's fraud claim but declined to refund her. First Direct say B didn't intend to scam Mrs O when she made the payments, and that she has a civil dispute with them.

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

An investigator looked into Mrs O's complaint and recommended First Direct refund her outstanding loss. The investigator said the evidence shows that Mrs O's funds weren't used for their intended purpose and were obtained by dishonest deception, so her claim is covered by the Contingent Reimbursement Model Code (CRM Code).

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

- It is incorrect to assume that all investor's would receive security for their payments, information provided by the administrators about different categories of investments has been overlooked.
- The opinion over relies on the charges brought by the Serious Fraud Office (SFO) and conflates that development with the different CRM Code test for what is an APP scam.
- The opinion reaches unsafe conclusions on the application of the CRM Code
- It is premature for an opinion to be reached as there is insufficient evidence to reach liable conclusions.

HSBC also provided evidence which they say supports the points they've raised.

As the case couldn't be resolved informally, it was passed to me to review.

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 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 Mrs O 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 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.

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 O made her payment, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mrs O thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payment and whether this was broadly in line with what Mrs O 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 O was making the payment to B as part of an investment. Based on the evidence that Mrs O had available at the time, I haven't seen anything to suggest she didn't think this was a legitimate purpose.

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

In reaching an answer on what purpose B had in mind, I've considered the wider circumstances surrounding B, and the linked companies involved in the investment. The key information is:

- Following their investigation, the Serious Fraud Office (SFO) said the defendants had provided false information to investors, "encouraging people to pay in whilst knowing that investments are not in reality backed up by the cars they had been promised".
- One of the linked companies (R) told the Financial Conduct Authority (FCA) that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.
- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should've had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Mrs O's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Mrs O's funds weren't used for the intended purpose and that B obtained the funds through dishonest deception. So, I'm satisfied that Mrs O's payment meets the definition of an APP scam and is covered by the CRM Code.

The CRM Code says that Mrs O is entitled to a full refund unless First Direct can establish that an exception to reimbursement applies.

First Direct haven't provided any evidence or arguments that an exception to reimbursement applies, but for completeness, I have considered this point.

Does an exception to reimbursement apply?

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

** There are further exceptions outlined in the CRM Code, but they don't apply to this case.*

I'm satisfied that Mrs O had a reasonable basis for believing the investment was legitimate. I say this because Mrs O had been to B's offices, talked to directors and staff and talked to previous investors. Also, B were an active company on Companies House, had positive reviews online and provided professional marketing material. I haven't seen any evidence that suggests there were warning signs that B wasn't offering a genuine investment when Mrs O made her payment in August 2019. So, First Direct couldn't rely on basis for belief as an exception to reimbursement.

First Direct haven't provided any evidence that Mrs O was presented with a warning when she made the payment. So, I can't fairly say Mrs O ignored an effective warning and First Direct can't rely on this exception to reimbursement either.

As, I'm not satisfied that First Direct can rely on an exception to reimbursement, Mrs O is entitled to a full refund of £56,000. First Direct can deduct from that refund the returns that Mrs O received (which total £18,180.48), meaning the net refund should be £37,819.52.

The interest award

Prior to the SFO completing their investigation, Mrs O's payment wouldn't have been covered by the CRM Code.

However, on the conclusion of the SFO's investigation on 19 January 2024, First Direct should've considered the available evidence and given Mrs O an answer under the CRM Code within 15 business days - as per R3 (1) (c) of the CRM Code.

This means interest should be calculated from 15 business days after 19 January 2024 (when the SFO investigation concluded) until the date of settlement. Interest is awarded at 8% simple per year.

It's possible that funds could be recovered at a later date through the administrators and First Direct are entitled to ask Mrs O to sign an indemnity to cover this eventuality.

The points HSBC have raised

HSBC have raised a number of points in response to the view, and I'm aware that our service has previously responded to the points they've raised in detail.

I'd like to reassure HSBC that I have considered all the points they've raised. But I've focused my decision on what I consider to be the crux of the complaint and how I've reached my decision.

The vehicle funding form, which is signed by Mrs O and a representative of B, has an area for the completion of vehicle specifics including make, model, chassis, registration no, and date of registration. This suggests that a specific vehicle or vehicles would be attached to the investment, which is what Ms O says she was told. The lack of security registration isn't the sole reason I'm satisfied this is an APP scam but is one of the factors that I've taken into account.

Based on all the evidence that I've seen, I'm satisfied that I can reach a decision that Mrs O's payment is covered by the CRM Code for the reasons explained above. I'm not persuaded I need to wait for any further updates from external parties or organisations to reach my decision.

Claims made to the FSCS

The Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about FSCS's position on claims submitted to FSCS against Raedex can be found here:
<https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/>

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the Raedex investment scheme. Whether the FSCS pays any

compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mrs O is now complaining to us about in connection with the activities of First Direct.

As I have determined that this complaint should be upheld Mrs O should know that as they will be recovering compensation from First Direct, they cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount they recover from First Direct they may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mrs O has already made a claim at FSCS in connection with B, and in the event the FSCS pays compensation, Mrs O is required to repay any further compensation they receive from their complaint against First Direct, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other public bodies can be found in our privacy notice here: <https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice>"

Putting things right

To put things right I require HSBC UK Bank Plc trading as First Direct to:

- Refund Mrs O £37,819.52 and
- Pay 8% simple interest per year on the refund, calculated from 15 business days after 19 January 2024 until the date of settlement.*
- In order to avoid the risk of double recovery the [bank] is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

* If First Direct considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs O how much it's taken off. It should also give Mrs O a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc trading as First Direct and require them to compensate Mrs O, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 16 January 2025.

Lisa Lowe
Ombudsman