

The complaint

Mrs S complains that HSBC UK Bank Plc – trading as First Direct Bank (“First Direct”) won’t refund the money she lost when she fell victim to an investment scam.

Mrs S’s complaint has been brought by a professional representative but I’ll only refer to Mrs S in this decision.

What happened

Mrs S had initially been looking for a investment opportunity with her husband when they came across a company I will refer to as “B”.

Mr and Mrs S reached out to B to find out more about how the company worked. They were told that for every £14,000 they invested, a car would be bought on their behalf and leased out by a connected company – “Raedex” “R”. They would receive monthly returns and a final gross payment at the end of the term. The vehicle itself would act as security for the investment.

Mrs S originally invested in B independently in 2018 but this investment, and its associated returns, do not form part of this complaint.

In 2020, when Mrs S was going through a divorce proceedings, she decided to invest again. In March 2020, July 2020 and February 2021, Mrs S made a further 3 investments amounting to £42,000. Mrs S received £4,277.76 in returns on these investments which leaves her outstanding loss at £37,722.24.

In July 2023, Mrs S complained to First Direct through her representative. They said First Direct failed to protect Mrs S at the time she made the payments to B and she should be reimbursed under the Lending Standards Board’s Contingent Reimbursement Model Code (CRM Code).

First Direct didn’t agree to reimburse Mrs S’s loss. It said her loss was due to B going into administration and that Mrs S’s circumstances amounted to a civil dispute with B.

Unhappy with First Direct’s response to her complaint, Mrs S brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full.

They said that the CRM Code required First Direct to provide an outcome within 15 days of the completion of the Serious Fraud Office Investigation on 19 January 2024 but had it not done so.

The investigator went on to explain why they felt Mrs S's complaint was covered by the CRM Code - and recommended that First Direct reimburse her in full. On top of this, the investigator said that First Direct should add interest at the rate of 8% simple per year from 15 days after 19 January 2024 to the date of settlement. Finally, the investigator said it would be fair for First Direct to ask Mrs S to sign an indemnity confirming she would return any funds that may later be recovered in the administration process.

Mrs S agreed with our investigators view but First Direct did not respond.

As an agreement was not reached, the case has been passed to me for a final decision.

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 deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met.

Is the CRM Code definition of an APP scam met?

Firstly, I have considered whether Mrs S's claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments...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.

To decide whether Mrs S is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mrs S thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments, and whether this broadly aligned with what Mrs S understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it

could be said this was as a result of dishonest deception.

From the evidence I have seen I'm satisfied Mrs S intended to invest in B. She understood that B would use the funds she paid to buy cars that would be leased, and she would receive returns on her investment. I haven't seen anything to suggest that Mrs S didn't consider this to be a legitimate purpose.

I've then gone on to consider the purpose B had in mind at the time it took the payments.

After careful consideration, I'm not satisfied B intended to act in line with the purpose agreed with Mrs S. I will explain why in more detail below.

In its first supervisory notice in respect of R in February 2021 the FCA noted that R said it had entered into approximately 1,200 car leases in the period between January 2018 to January 2021, but only 69 charges had been registered.

In the same notice, the FCA said it had conducted a sampling of R's leaseholder list against the DVLA database and identified various discrepancies between its business model and vehicle inventory. The FCA report referred to the fact that 55 cars appeared to be second hand (although its business model relied to a large extent on securing heavy discounts on new vehicles), to vehicles that couldn't be found, and to leases entered into at a date significantly before the vehicle was put on the road. The FCA also concluded that the group's liabilities significantly exceeded its assets, and its business model was fundamentally unsustainable.

I have also seen evidence from an SFO news release dated 19 January 2024 which confirms that two directors of B have been charged in relation to the car lease scheme. The news release noted that directors were accused of providing those who signed up with false information, encouraging people to pay in with false information whilst knowing that investments weren't backed up by the cars they had been promised.

The SFO also noted that the investment was backed by a tangible asset – a car. In Mrs S's case the "Vehicle Funding Form" she was provided with when he made this payment didn't specify a particular vehicle but did refer to the number of units being funded. The evidence I have referred to above shows this aspect of the investment wasn't being performed.

A report by the administrators of one of the connected companies said that the total number of loan agreements relating to 834 investors was 3,609. But the number of vehicles held by the company at the time it went into administration was 596, equating to less than one car for every six loan agreements. If the proposed vehicles weren't being purchased and leased, it's unclear how the proposed returns could've been achieved legitimately.

Overall, I'm satisfied B didn't provide the investment it offered to Mrs S and didn't follow its business model. The purpose B intended when it took Mrs S's funds wasn't aligned with hers. Given the information provided by the SFO in respect of what the directors of B are accused of, I'm persuaded that the purposes each party had in mind for the payments weren't aligned as a result of dishonest deception. This means that I'm satisfied the CRM Code definition of an APP scam has been met.

Should Mrs S be reimbursed under the CRM Code?

First Direct is a signatory to the CRM Code which requires firms to reimburse victims of APP scams like this one unless it can establish that it can rely on one of the listed exceptions set

out in it. 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 services; and/or the person or business with whom they transacted was legitimate.
- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

It is for First Direct to establish that an exception to reimbursement applies. And in this particular case, First Direct didn't respond to our request for its file or to our investigators opinion. It has mentioned briefly in its final response letter that it believes Mrs S was provided with effective scam warnings at the time she made the payments under discussion here. But it has provided no further detail. So, overall, I'm not persuaded that First Direct has demonstrated that any of the listed exceptions can fairly be applied.

For the sake of completeness, I'll briefly cover why I'm not persuaded any of the listed exceptions can be fairly applied. Mrs S first decided to invest with B when it appears to have been well-established. The investment had been recommended by her then husband, who was an accountant. And at this point others had received returns on their investments and she ultimately did too. She had been provided with a Vehicle Funding Forms that looked legitimate and the rate of return she was being offered didn't appear to be too good to be true. So, I don't think there was anything that ought reasonably to have caused her concern at the time of making the payments.

First Direct has said it provided Mrs S with scam warnings when she called to make the payments in question here. But it hasn't provided us with any further information or evidenced what was discussed with Mrs S during these calls. So, it hasn't demonstrated that Mrs S ignored an effective scam warning either.

I've also thought about whether there is any other reason why First Direct should reimburse Mrs S. But even if I conclude that First Direct ought reasonably to have intervened and asked Mrs S probing questions about the nature of the payments and provided scam advice, I don't consider the scam would have been uncovered and her loss prevented. I say this because I don't think there was enough information available at the time that would have led First Direct to be concerned that Mrs S was at risk of financial harm.

Putting things right

Overall, I'm satisfied First Direct should refund Mrs S her outstanding loss of £42,000 minus any returns received.

Mrs S's representatives have confirmed Mrs S's returns amount to £4,277.76.

Interest

I'm not persuaded First Direct acted unreasonably in not upholding Mrs S's claim when it was first reported in July 2023. However, at the conclusion of the SFO investigation, I consider First Direct should have assessed all the available evidence and made a decision

within 15 business days of 19 January 2024. So First Direct should pay interest at the rate of 8% simple from 15 business days after the SFO published its outcome on 19 January 2024.*

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

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 S 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 S 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 S has already made a claim at FSCS in connection with B and in the event the FSCS pays compensation, Mrs S 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>

Double recovery

In order to avoid the risk of double recovery First Direct is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

My final decision

I uphold this complaint against HSBC Bank UK Plc – trading as First Direct Bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 27 January 2025.

Emly Hanley Hayes
Ombudsman