

The complaint

Mr and Mrs S complain that HSBC UK Bank Plc trading as first direct ('First Direct') won't refund the money they say was lost as the result of a scam.

What happened

In 2017, Mr and Mrs S found an investment opportunity through an advertisement for a company I'll refer to as B. Mr and Mrs S say there was media and transport advertisements, and seminars were held regularly for prospective investors. Prior to investing, they checked online reviews (which were positive) and talked to the owners of B.

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. Mr and Mrs S were told they would receive a monthly return and, on maturity, a lump sum of capital and interest.

Mr and Mrs S aren't complaining about investments they made with B in 2017 or 2018.

In 2019, having received the expected returns on their earlier investments, Mr and Mrs S decided to invest with B again. They made the following payments from their First Direct account.

Date	Details of transaction	Amount
29.7.2019	Payment to B	£56,000
17.12.2019	Payment to B	£56,000
26.5.2020	Payment to B	£42,000
27.5.2020	Payment to B	£56,000
27.10.2020	Payment to B	£42,000
27.10.2020	Payment to B	£56,000
	Total invested	£308,000

Mr and Mrs S received returns on their investments until January 2021, receiving a total of £53,793.36. No returns were received after January 2021.

In March 2021, B went into administration.

Mr and Mrs S believe the investment was a scam, and through a professional representative, raised a fraud claim with First Direct in July 2023.

First Direct investigated Mr and Mrs S's fraud claim but declined to refund them. First Direct say B was formally trading at the time the payments were made, but later went into administration – meaning Mr and Mrs S have a civil dispute with B.

Mr and Mrs S weren't happy with First Direct's response, so they brought a complaint to our service.

An investigator looked into Mr and Mrs S's complaint and recommended First Direct refund their outstanding loss. The investigator said the evidence shows that Mr and Mrs S's funds

weren't used for their intended purpose and were obtained by dishonest deception, so their claim is covered by the Contingent Reimbursement Model Code (CRM Code).

First Direct 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.

First Direct 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).

Are Mr and Mrs S 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 Mr and Mrs S made their payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mr and Mrs S 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 Mr and Mrs S 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.

Mr and Mrs S were making the payment to B as part of an investment. Based on the evidence that Mr and Mrs S had available at the time, there's nothing to suggest they 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 Mr and Mrs S 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 Mr and Mrs S' funds, or that security was registered at Companies House, as set out in the investment agreement.

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

The CRM Code says that Mr and Mrs S are 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 Mr and Mrs S had a reasonable basis for believing the investment was legitimate. I say this because they had successfully invested with B previously, receiving returns in line with the investment terms. 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 Mr and Mrs S made their payments. So, First Direct couldn't rely on basis for belief as an exception to reimbursement.

First Direct haven't provided any evidence that Mr and Mrs S were presented with a warning when they made the payments. So, I can't fairly say Mr and Mrs S 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, Mr and Mrs S are entitled to a full refund of £308,000. HSBC can deduct from that refund the returns that Mr and Mrs S received (which total £53,793.36), meaning the net refund should be £254,206.64.

The interest award

Prior to the SFO completing their investigation, Mr and Mrs S'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 Mr and Mrs S 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 Mr and Mrs S to sign an indemnity to cover this eventuality.

The points First Direct have raised

First Direct 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 First Direct 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.

In this case, Mr and Mrs S's welcome letter from B says: "with our asset backed investment opportunity, your capital is used to fund a specific vehicle, or vehicles...The vehicle you fund is secured in your favour until the loan is repaid by way of a fixed charge, which will be registered at Companies House". And, as set out above, there is no evidence that a car was purchased with Mr and Mrs S' funds or that a charge was registered.

Based on all the evidence that I've seen, I'm satisfied that I can reach a decision that Mr and Mrs S'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 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 Mr and Mrs S are now complaining to us about in connection with the activities of First Direct.

As I have determined that this complaint should be upheld Mr and 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 Mr and Mrs S have already made a claim at FSCS in connection with B, and in the event the FSCS pays compensation, Mr and Mrs S are 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 Mr and Mrs S £254,206.64 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 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.

* If First Direct considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs S how much it's taken off. It should also give Mr and Mrs S a tax deduction certificate if they ask for one, so they 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 Mr and Mrs S, as set out above.

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

Lisa Lowe
Ombudsman