

Complaint

Mr P is unhappy that HSBC UK Bank Plc (trading as First Direct) didn't reimburse him after he reported falling victim to a scam.

Background

Mr P saw an advertisement on social media promoting what appeared to be an investment opportunity. The opportunity was being marketed by a company I will refer to as "S". S informed Mr P that it was offering investments in artwork. He was told that a broker would be assigned to him, whose role would be to source pieces with investment potential. These artworks could later be sold through S's gallery in central London or, eventually, in Dubai.

Mr P says he visited S's London gallery and met with a representative. He was told that several events were planned to showcase the artist's work, which would help increase the value of his investment. However, these events did not take place. Mr P was either given excuses for the cancellations or told that the events had occurred and that his artwork had appreciated in value.

When Mr P asked for the artwork to be sold, the individuals involved became increasingly difficult to engage with and reluctant to follow his instructions. Their evasiveness and insistence that he should not sell the artwork understandably concerned him. In 2023, Mr P discovered that S had gone into liquidation. At that point, he became convinced that he had been the victim of a scam and reported the matter to First Direct.

Mr P had used his First Direct account to make two payments to S in March 2022, totalling just under £55,000. First Direct declined to refund him, stating that it considered the matter to be a civil dispute rather than an authorised push payment ("APP") scam. The bank said that Mr P had invested in artwork which, ultimately, had not appreciated in value as he had hoped.

Mr P later learned from the liquidators that his art prints were being stored in Switzerland. He contacted the storage company, which confirmed that the prints were indeed there. However, he was advised that there was no straightforward way to sell them on the secondary market, and that their value was limited.

Mr P was unhappy with First Direct's decision to not refund him. He brought his complaint to this service. It was looked at by an Investigator who didn't uphold it. Mr P disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

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 at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services

Regulations 2017 and the terms and conditions of the customer's account. Mr P authorised these payments and so is presumed liable at first instance. However, that is not necessarily the end of the matter. First Direct was signed up to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Under this Code, firms are expected to reimburse customers who fall victim to authorised push payment (APP) scams, except in a limited set of circumstances.

That said, the CRM Code only applies to payments that meet its definition of an APP scam. In Mr P's case, for the Code to apply, he must have *"transferred funds to another person for what he believed were legitimate purposes but which were in fact fraudulent."* In addition to that, the Code explicitly excludes *"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."*

To determine whether Mr P's payments fall within the scope of the CRM Code, it must be established that the purpose for which Mr P made the payments and the purpose for which the recipient procured them were different; and that this difference arose due to dishonesty or deception on the part of the recipient. The key issue, therefore, is the intentions of the recipient at the time the payments were made. It's not possible to know their intentions with certainty, and so I have to look at the available evidence and attempt to infer what those intentions likely were.

Mr P says this was an APP scam. To support that, he sent a copy of a freezing order linked to S's accounts. He also provided several affidavits, including one from the liquidator. These documents were used in court to support claims of fraud. I've looked at that extra evidence when deciding if the payments are covered by the CRM Code. I know this will be very disappointing for Mr P, but I'm not persuaded the evidence shows this was an APP scam.

Mr P made two payments to a company for art works in the belief that he was making a legitimate art investment. After the company went into liquidation, Mr P contacted the warehouse where he believed his prints were stored. He was provided with an inventory of the prints held, and there is no indication that any were missing. This suggests that there was, broadly speaking, an alignment between Mr P's purpose in making the payment and S's purpose in procuring it.

I understand that concerns have been raised about the value and resale potential of the prints, and Mr P argues that this was never a genuine investment but a scam from the outset. However, I must weigh the fact that Mr P made the payments on the understanding that specific pieces of art would be purchased and held on his behalf. The evidence supports that this occurred. There were contracts in place with the artists, as well as with printers and storage facilities. Mr P's art was stored at one of these facilities, which indicates that the business was operating in a manner consistent with its stated purpose.

It's also important to note that art valuation is subjective, and high mark-ups are not uncommon in this industry. While the mark-up in this case may be higher than usual, the overall evidence suggests that Mr P's and the company's intentions were broadly aligned. I accept that, in the freezing order, the judge referenced that there was no real secondary art market for what was purchased. This contradicts the assurances that investors were given. It also seems that, when sales did take place, S was buying back the art itself to enable the investor to make a profit, rather than selling it on to a new customer. Buying the art back may have been a tactic used to get investors to then buy further prints, as it conveyed the impression that their investment was performing well. This does raise some questions around how S was operating. Despite that, arguably underhand business practices are insufficient to persuade me that the intentions of S when taking these payments was to defraud Mr P. In addition, the judge who heard the application for the freezing order made it

clear that the substantive merits of the argument that this was fraudulent wasn't within the remit of that hearing. Instead, it was something that would need to be considered in a trial.

Mr P pointed to the judge's comment that there was a "good arguable case" for fraud. But the legal threshold for that isn't high. It doesn't require that there be a greater than 50% chance that the investment was fraudulent and so I can't rely on it to make a finding that it was more likely than not that Mr P was scammed. Mr P also sent affidavits signed before the freezing order. He highlighted parts of the liquidator's first affidavit. These mentioned fraud, fraudulent trading, and breach of trust. I've read those parts and the rest of the document. After those sections, the liquidator included a section headed "*Full and Frank Disclosure*". That part listed arguments S might use to defend itself. This shows there may be valid counterarguments S could make to respond to some of these concerns. These are just the liquidator's views. S might have said more if the case had gone to trial. The judge saw these documents and still said a trial was needed.

Regrettably, no trial took place because S settled the matter before trial. The settlement was made without admitting guilt or liability and the terms of the settlement are confidential. I can't assume that S was guilty on the basis that it opted to settle the claim. There are many other reasons why parties might settle out of court. Overall, I'm not persuaded that this is sufficiently strong evidence that S defrauded Mr P.

Mr P does own the artwork he paid for. The dispute is about how valuable it is and whether it was a good investment. There is evidence that S acted like a genuine business. I don't have strong evidence that it meant to defraud Mr P from the start. New evidence may come to light, which could change the basis on which this case has been determined. If new, material information emerges in the future, Mr P would be entitled to raise a new complaint with First Direct. However, I must decide this complaint based on the evidence currently available. At this time, I am not persuaded that First Direct acted incorrectly in treating this as a civil dispute, and therefore not paying a refund under the CRM Code..

Final decision

For the reasons I've explained above, I don't uphold this complaint.

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

James Kimmitt
Ombudsman