

The complaint

Mr and Mrs B complain that HSBC UK Bank UK Plc, trading as first direct ('First Direct'), won't refund the money they lost as a result of what they believe was a property investment scam.

Mr and Mrs B bring their complaint with the assistance of a professional representative. For ease of reading within this final decision, I will refer solely to Mr and Mrs B in the main.

What happened

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

Mr and Mrs B say that they were persuaded to invest with a company – which I'll refer to as 'Company H' in my decision. Company H was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. Mr and Mrs B say the sale and rent of Company H's assets would later generate company income which would be used to pay investors returns.

Mr and Mrs B invested with Company H in October 2019, making a cheque payment of £40,000 to Company H.

Company H has since gone into administration. Mr and Mrs B believe the investment wasn't genuine and that they are the victims of a scam. They complained to First Direct in September 2024 advising Company H was operating a fraudulent investment scheme, and that First Direct failed in its duty of care to prevent their loss. So, they thought First Direct should reimburse them.

First Direct didn't consider it was liable for their loss. It advised cheque payments weren't covered by the provisions of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code, and it had carried out its legal obligation to process the cheque in accordance with Mr and Mrs B's instructions.

Unhappy, Mr and Mrs B brought their complaint to this service. Through their representative, they provided detailed evidence that they considered supported their contention that they were the victim of a scam by Company H and that they should be reimbursed.

The Investigator who considered this complaint didn't recommend that it be upheld. They acknowledged the payment wasn't covered by the provisions of the CRM Code. And they also considered that even if First Direct had intervened and questioned Mr and Mrs B about the payment they were making, as there was no adverse information about Company H, it would have been satisfied it was a genuine payment and that Mr and Mrs B weren't at risk of financial harm. The Investigator also noted that First Direct wouldn't have been able to provide any personal investment advice.

Mr and Mrs B disagreed and maintain that their complaint should be upheld and First Direct could have done more to prevent their loss. They also say that First Direct failed to comply with PAS 17271:2017 (the PAS Code) and the FCA Principles. And they have explained why they think Company H was operating a scam and a Ponzi scheme – referring to high commissions of around 25% paid to introducers and to high interest rates of 10-12%.

As Mr and Mrs B didn't accept the Investigator's opinion, the complaint 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

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.

However, in some situations, taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), businesses such as First Direct shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

First, I accept Company H failed to deliver what was expected from the investment, and Mr and Mrs B are out of pocket as a result. But I haven't seen any clear evidence this was always what it intended; or that at the time of the payment, it planned to use Mr and Mrs B's funds in a different way to what was agreed. I haven't seen persuasive evidence that Company H's intention was to defraud Mr and Mrs B when it took their funds. In short, I'm not persuaded Company H was operating a scam as suggested.

I say this because Company H completed three different development projects. Company H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.

Points raised by Mr and Mrs B are largely based on assumptions and indicate poor business and financial management but don't go far enough to meet the definition of a scam. Whilst Company H may have, for example, misrepresented certain information, failed to cooperate with administrators, not filed accounts and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn here.

I've not seen anything from the administrators of the company to suggest Company H was operating a scam or that the transactions carried out by Company H and connected companies were done with any intention other than putting investors' funds toward development projects. Whilst transactions have been investigated, there is currently no evidence that funds weren't used for the intended purpose.

Ultimately, the information we currently hold suggests that Company H was a failed investment venture, not a scam. The information provided doesn't evidence Company H had fraudulent intent when it took Mr and Mrs B's funds.

When considering the above – and thinking about when Mr and Mrs B made the payment and whether First Direct could have prevented Mr and Mrs B's loss – I can't say fairly say any intervention would have made a material difference here.

As explained earlier, First Direct is expected to process payments and withdrawals that its customer authorises it to make, but First Direct should have also been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

With the payment Mr and Mrs B made, even had First Direct intervened and carried out some additional checks, I'm not persuaded that First Direct would have had any concerns about the payment Mr and Mrs B were making. Company H was a legitimate company operating at the time the payments were made. Detailed documentation was provided and there was nothing in the public domain at the time to suggest First Direct should have been concerned that Mr and Mrs B might be at potential risk from fraud. Many of the points / concerns about some aspects of Company H that have been raised, have come to light after detailed analysis years after Mr and Mrs B made the payment.

I'm really sorry to disappoint Mr and Mrs B, as I know they have lost a significant amount of money. But I'm not satisfied that I can fairly say First Direct are liable to refund them. I'm not satisfied First Direct would have been on notice that Mr and Mrs B were potentially at risk of financial harm from fraud at the time they made the payment – so therefore it couldn't have prevented their loss. Overall, I don't consider their loss is the result of any failings by First Direct.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 31 October 2025.

Matthew Horner
Ombudsman