

The complaint

Miss B complains that HSBC UK Bank Plc, trading as first direct (first direct), won't refund the money she lost to a property investment opportunity, that she now considers was a scam.

Miss B is being represented by a claims management company in this complaint.

What happened

Miss B made a payment to a firm, which I'll call H, in 2018 for what she believed was an investment opportunity it was offering. Miss B says she has not been able to withdraw or recover any of the money sent – so she thinks it was a scam.

There has been little information provided regarding the circumstances of the disputed payment, beyond the above, so I've kept the background brief.

In response to the complaint from Miss B, first direct argued the payment was to a genuine investment and treated the loss as a civil dispute. It also said the payment was before the introduction of the Contingent Reimbursement Model (CRM) Code.

After the complaint was referred to the Financial Ombudsman Service, our Investigator considered it first. They also concluded the payment was not covered by the CRM Code and that there was not enough evidence to show the funds sent were not used for their intended purpose by H. The investigator said the payment didn't meet the definition of an authorised push payment (APP) scam.

Miss B's representatives argued that the investigator had not considered the appropriate test when considering the CRM Code, and did not give appropriate weight to certain evidence, which indicated H was a Ponzi scheme.

Miss B's representatives provided a forensic accountant's report, legal advice it had received, and a High Court judgement, made against a company that formed part of H.

As Miss B and her representatives disagreed with the investigator, the complaint has been passed to me to make 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.

Having done so, I have decided to not uphold this complaint. I know this will be disappointing for Miss B, but I'll explain why I've reached that conclusion.

It isn't in dispute that Miss B authorised the payment she made to H. Because of this the starting position – in line with the Payment Services Regulations (PSRs) 2017 – is that she is liable for the transaction. But she also says that she has been the victim of an APP scam.

In order to determine if Miss B has been the victim of an APP scam, I need to consider if H was a dishonest scheme, one that was intended to deceive her into departing with her money. To do this I've considered whether Miss B's intended purpose for making the payment was legitimate, whether the intended purposes she and H had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the H.

As I mentioned earlier, despite requests to Miss B and her representatives, we've not been given the background in relation to the payment Miss B made to H. So, I don't know what she believed she was specifically investing in, what returns she expected and when. Despite this, I accept that H may have failed to deliver whatever Miss B was expecting from the investment. However, 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 Miss B's funds in a different way to what was agreed.

Miss B said the payment was made for a property development investment. I've seen evidence that three building projects were completed by H and they also had other projects ongoing. However, these had to be sold to other developers after they entered into financial difficulty. On balance, I think this shows H was a legitimate company involved in legitimate building projects and I think it's unlikely a scam company would have completed three large scale building projects at significant cost in order to entice more funds from investors.

The liquidator for H has not provided any evidence to suggest they were acting fraudulently or operating a Ponzi scheme. While it appears H has not managed its finances correctly, I don't think this therefore means they were conducting a scam or that they intended to scam investors at that time. As I've said, during this period in question, H was completing development projects around the country, and I think this highlights that they intended to use customer's investments in these development projects. Ultimately while the information Miss B's representatives provided, does indicate there may have been some poor business practices, it isn't enough to say H was operating a scam.

Miss B's representative submitted evidence of an order judgement against one of the companies in H – which suggests this company traded while insolvent. This is one company within the group though and again it's not enough to reach the conclusion that funds weren't used for the intended purpose.

On balance, I think H's intended purpose for the funds matched Miss B's and nothing I have seen indicates to me that H intended to defraud her. Instead, I think the evidence suggests this was a failed investment, so I don't think it meets the definition of an APP scam. And I think first direct acted reasonably when it treated the case as a civil dispute.

Given the conclusion that the payment was not fraudulent, the expectations on first direct, to act to protect customers who may be at risk from financial harm from fraud is not triggered here. This includes the expectations under the CRM Code, which wouldn't have applied anyway, given the disputed payment pre-dated its introduction.

I acknowledge further evidence may come to light at a later date, which may indicate H was operating a scam. Should such evidence come to light, then Miss B can complain to first direct again, and refer the matter to this office, should she not be happy with the outcome.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept

or reject my decision before 2 January 2026.

John Ryan
Ombudsman