

The complaint

Mrs W complains that HSBC UK Bank Plc trading as First Direct ('First Direct') won't refund the money she says was lost as the result of a scam.

What happened

Mrs W says a neighbour told her about a company offering investors the ability to invest in artwork. I'll refer to this company as S.

Mrs W reviewed S's website and two of the artists whose artwork was being sold. One of the artists had exhibited at the Saatchi gallery.

Mrs W made the following payments to S, to purchase individual pieces of art.

Date	Pmt	Details of transaction	Amount
12.11.2021	1	Transfer to S	£4,500
30.5.2022	2	Transfer to S	£1,000
14.6.2022	3	Transfer to S	£9,752
28.6.2022	4	Transfer to S	£10,286
31.8.2022	5	Transfer to S	£10,240

Mrs W stopped purchasing art due to difficult personal circumstances. She says that the art she purchased is worthless and that S defrauded her.

Ultimately, S went into liquidation.

Mrs W raised a fraud claim with First Direct in April 2024, through a professional representative, asking that First Direct refund her.

First Direct looked into Mrs W's claim but declined to refund her. First Direct said S were a genuine company who have failed, and Mrs W has a civil dispute with S.

Mrs W wasn't happy with First Direct's response, so she brought a complaint to our service. An investigator looked into Mrs W's complaint but didn't recommend that First Direct refund her. The investigator wasn't satisfied that Mrs W had evidenced that it was a scam, and that the funds weren't used for their intended purpose by S. The investigator felt that if First Direct had intervened at the time the payments were made, Mrs W's loss wouldn't have been prevented.

Mrs W disagreed with the investigator's opinion and her representative provided a substantial response and evidence explaining why. In summary, they say the artwork is worthless, S misrepresented itself and the art to investors, and the majority of the investors' funds paid to S weren't used for the intended purpose.

The investigator addressed the points raised and explained that the evidence didn't change their opinion. But Mrs W asked for an ombudsman to review her case, so it has been 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.

I'd like to reassure Mrs W that I have carefully reviewed and considered all of the evidence that she has provided, as well as her responses to the investigator's opinion. But I've focused my decision on what I consider to be the crux of the complaint, the answer I've reached and how I've reached it.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is more likely than not to have happened in light of the available evidence.

In broad terms, the starting position at law is that First Direct is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Here it's not in dispute that the payments were authorised, albeit Mrs W did so not realising she would experience a financial loss as a result. But that doesn't make the payments unauthorised. So, the starting position is that First Direct isn't liable for the transactions.

Is Mrs W 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 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 Mrs W made the payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mrs W thought this purpose was legitimate.
- The purpose the recipient (S) had in mind at the time of the payments and whether this was broadly in line with what Mrs W 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.

Mrs W was making the payments to purchase art as an investment. I haven't seen anything that would suggest Mrs W didn't think this was legitimate.

So, I've gone on to consider what purpose S had in mind and whether it was in line with what Mrs W thought.

In reaching an answer on what purpose S had in mind, I've considered the wider circumstances surrounding S, its directors and any linked businesses.

Mrs W hasn't evidenced that her funds weren't used to purchase the art she was investing in. She would need to prove that her art wasn't in storage, or that it had been lost and cannot be located – which she hasn't done.

While there is strong evidence that there was misrepresentation about S's role and involvement in the investment, it is generally accepted that artwork existed. I say this based on the evidence from storage companies confirming the existence of prints. Also, it was confirmed in the High Court hearing of October 2024, held in relation to a freezing order. And, misrepresentation or a failing of fiduciary duty, doesn't necessarily mean that it was a scam.

There is evidence of contracts with different artists and some secondary market sales. And, while the agreed mark-up of artwork was significant, in the art world, a high mark-up is common. It doesn't mean that it was fraud. It's worth noting that some of the newer artists didn't agree that their work had been overvalued – although I appreciate their view may be biased.

As part of Mrs W's submissions, she included a judgement handed down in relation to a hearing and the freezing of the accounts linked to S. This included multiple affidavits, a response provided by the liquidator answering specific questions Mrs W's representative asked, and evidence the liquidator submitted to the court.

Mrs W has pointed to comments made by the judge, in their findings, that there was a good arguable case for fraud. But the judgement also made it clear the threshold for a "good arguable" case is low – lower than 50%, so falls below the balance of probabilities threshold. Also, the judge was at pains not to conduct a fraud hearing, despite both parties making substantive arguments in that respect. The judge was careful to say the dispute in relation to the price/value of the art and the secondary market were matters for trial and drew no conclusions.

I'm aware that S and the administrator/liquidator have settled out of court, so a trial didn't occur. Mrs W's representative says this is an admission of fraud. However, the liquidator/administrator has confirmed that the details of the settlement are confidential, and there was no admission of liability or fraud or guilt. And, although S were going to pay a sum to them, the amount was not disclosed or what it related to.

The liquidator appears to be pursuing S for fraudulent trading and have indicated to Mrs W's representative they believe the matter is a scam due to the overinflated prices that investors were charged for the art. The liquidator potentially reports up to £21million obtained from investors with only £5million being used to purchase prints. But we don't know what the other £16million was potentially used for, i.e. overheads, staff, or whether the money was misappropriated.

The liquidator says 95% of investor funds went to the company director, but no detail has been provided about what happened to the funds following that or what they were used for. Without clear evidence of exactly what the funds were used for, I can't fairly say that they weren't used for the intended purpose.

The affidavits are individual statements from investors who purchased art from S. In some of these, the investors confirm that there is art in storage or that art was purchased and sold through S. Others aren't clear as to whether the artwork they purchased has been located. Most refer to allegations of misrepresentation or mis-selling by S, as well as allegations that the art is worthless. In reaching an answer on Mrs W's case I have to consider the wider circumstances and evidence surrounding S and any linked business, as well the individual circumstances of Mrs W's case.

Having carefully considered all the evidence that Mrs W has provided, I'm not satisfied that she has shown S took her funds with a different purpose in mind, or that her funds weren't used for the intended purpose – the purchase of art. On that basis, I'm not satisfied that the circumstances under which Mrs W made her payments meets the definition of an APP scam, and I can't fairly hold First Direct liable under the CRM Code.

Is there any other reason I could hold First Direct liable for Mrs W's loss?

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider First Direct should fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I'd expect First Direct to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

First Direct say Mrs W was shown a warning when she made the first payment in July 2021. This recommended that Mrs W talk to someone she trusted who wasn't involved in the investment, she independently research the company she was sending money to, and that she check the Financial Conduct Authority's website to ensure the company was genuine and authorised.

Even if I was satisfied that First Direct's warning didn't go far enough and that they should've called Mrs W to discuss the payments, I'm not satisfied that intervention would've prevented Mrs W's loss. I say this because all of the information available at the time of the payments, suggested that it was a genuine investment. S were a UK incorporated company who had been trading for a number of years by the time Mrs W made her first payment. They had a London office, and they provided professional marketing material in relation to the investment.

Regardless of what questions First Direct had asked, I'm not satisfied that the information they would've been given should've concerned them that Mrs W was at risk of financial harm from fraud, or that they could reasonably have refused to follow Mrs W's payment instructions.

It's possible that material new evidence may become available at a later date, for example, following further investigation by external organisations. If it does, Mrs W can ask First Direct to reconsider her claim.

Mrs W has told us about the very challenging personal circumstances she faced in 2022, and her vulnerability at that time. However, as I'm not satisfied that her payments are covered by the CRM Code, I can't apply the vulnerability provisions set out in it. And, I wouldn't have expected First Direct to take any additional steps at the time the payments were made as a result.

I'm really sorry to hear about the difficulties Mrs W has faced and can understand why it is so important that she recovers the money she paid to S. Unfortunately, based on the evidence, I'm not satisfied that I can fairly ask First Direct to refund her or hold them liable for her loss.

My final decision

My final decision is that I don't uphold this complaint against HSBC UK Bank Plc trading as First Direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 9 September 2025.

Lisa Lowe
Ombudsman