

The complaint

Mrs B complains HSBC UK Bank Plc, trading as first direct ('First Direct'), hasn't reimbursed her following an authorised push payment ('APP') investment scam she fell victim to. She says First Direct should reimburse her for the money she lost.

In bringing her complaint, Mrs B has used the services of a professional representative. Within this decision, for ease of reading, I will refer solely to Mrs B throughout.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Mrs B was introduced to an investment company whom I'll refer to as 'V'. Mrs B says her son and some of his friends had been investing through V and had made good returns on their initial investments and had made some withdrawals. Mrs B says she reviewed V's website and considered it looked genuine and professional. Believing everything to be legitimate, Mrs B opened an account with V and on 17 November 2022, she transferred £10,000 from her First Direct account to the account of one of the founders of V. Mrs B received confirmation from V advising her funds had been forwarded to its Financial Conduct Authority ('FCA') regulated broker's account. Mrs B received updates on her investment and tracked its performance online through her account with V. On 13 March 2023, happy with how things were going, Mrs B transferred a further £500 and £4,500 towards her investment – to a business account associated with V.

Shortly after, on 18 May 2023, V emailed its investors. V advised that it had been working with the FCA and the FCA had requested information from V on a number of details. V explained it was working with its lawyers to ensure it provided everything the FCA needed. V explained as part of the process it had been asked to temporarily pause any trading until the situation was resolved. Mrs B contacted V on 30 May 2023 asking for an update on V's situation with the FCA and when it expected to be trading again. Mrs B says in June 2023 a message was added to V's website saying V had been in communication with the FCA since 18 April 2023. Mrs B says she contacted the FCA and was told it was carrying out an investigation into V.

Mrs B, through her representative, reported the matter to First Direct in March 2024 to try and recover her funds or be reimbursed her loss under the Lending Standards Board ('LSB') Contingent Reimbursement Model Code ('CRM Code'). This was a voluntary code that First Direct was a signatory of. The CRM Code required firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances.

Mrs B says she didn't receive a response from First Direct and so referred her complaint to this service.

First Direct advised our service it hadn't received the complaint from Mrs B but looked into the matter and issued its final response to Mrs B on 28 May 2024. It advised it was aware of V and was waiting industry guidance from law enforcement / FCA to confirm that V had an intent to scam investors. It advised it had no timescales as to when it expected an update, but it would keep Mrs B updated accordingly. It went on to explain that it would close Mrs B's complaint down and she could refer the matter to our service also.

One of our Investigators looked into the matter and upheld Mrs B's complaint. In short, they explained that they did not think it was fair for First Direct to wait for the FCA's investigation into V to be concluded, before making a reimbursement decision under the CRM Code. Having reviewed the complaint, they felt it was more likely V was operating as a scam – and this was based on a number of factors. They therefore assessed the complaint under the CRM Code. They felt that Mrs B had a reasonable basis for believing her investment with V was genuine, so they did not think an exception to reimbursement applied.

They therefore recommended a full refund of the payments Mrs B made totalling £15,000, as well as 8% simple interest from 15 days after Mrs B raised her fraud claim with First Direct to the date of settlement.

Mrs B accepted the findings, however First Direct did not.

In short First Direct considered:

- there was an ongoing investigation by the FCA into V and currently there have been no charges brought against V, or any of its employees, therefore waiting for the outcome of the FCA's investigation into V was important;
- if the FCA investigation determined it was a genuine investment then our service wouldn't be in a position to instruct Mrs B to repay First Direct if it had already been held fully liable and had reimbursed Mrs B in full as per the Investigator's view;
- when Mrs B sent the funds, V were not on the FCA warning list at that time;
- Mrs B had a history of making large payments so the transactions she made were not unusual for her; and
- Mrs B didn't choose the correct payment purpose of 'investment' when making the payments selecting 'friends and family' and 'goods and services' instead. So, it was prevented from providing Mrs B with an effective warning that would have been more appropriate to the payment she was actually making.

Overall, First Direct did not think it could be concluded that V was operating as a scam until the FCA's investigation was concluded and our service should wait until the outcome of that investigation.

As an informal agreement could not be reached, 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 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 have been good industry practice at the time.

First Direct was a signatory to the CRM Code. It required firms to reimburse victims of APP scams in all but a limited number of circumstances.

The main point of dispute here is whether V was operating as a scam or not. First Direct *appears* to be relying on R3(1)(c) of the CRM Code to defer making a decision on this point. R3(1)(c) says:

"...If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision."

So, I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the FCA investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine Mrs B's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mrs B was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Mrs B first raised her claim with First Direct in March 2024, albeit with First Direct advising this wasn't received leading to it issuing its final response in May 2024. And I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mrs B an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm aware the above processes might result in some recoveries for V's investors; in order to avoid the risk of double recovery, I think First Direct would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mrs B under those processes in respect of this investment before paying anything I might award to her on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the ongoing FCA investigation for me to fairly reach a decision on whether First Direct should reimburse Mrs B under the provisions of the CRM Code.

In order to reach a decision, I've considered the definition of an APP scam under the CRM Code. Under DS1(2) an APP scam is defined as:

“...a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

DS2(2)(b) explains that 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”

Of particular relevance here is whether Mrs B transferred funds to V for what she believed to be legitimate purposes, but which were, in fact, fraudulent.

It's evident that V had some features that gave it the impression of operating legitimately. There are identifiable individuals associated with V who held in-person and online events to promote the investment. And many people who lost money had been introduced to the scheme through personal recommendations (sometimes by people who'd successfully withdrawn significant 'profits' from the scheme).

There is also evidence that some of the money that was received by the founding individuals at V (though not the limited company V) did end up with a foreign exchange ('Forex') platform (which wasn't FCA regulated but was part of a group of companies – of which one was FCA regulated). It also appears some funds sent to V's bank account were converted into cryptocurrency and sent to the Forex platform.

However, I've found the following facts to be persuasive evidence that V was operating as a scam:

- We are now aware that V's claims of being at least in the process of being regulated with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with an FCA authorised trading exchange and that it was regulated.
- Less than half of the funds sent to the two founding individuals of V was potentially used for the intended purpose of Forex trading. Whereas Mrs B sent funds with the understanding they would immediately be moved to an FCA regulated trading account to be used in Forex trading, as Mrs B understood her agreement with V to be, and as she was told in an e-mail following her initial investment deposit of £10,000. But this didn't happen.

- Of the investors' funds that were sent to V's business account, these were either sent to a cryptocurrency exchange platform or paid to other investors as withdrawals. Investors were led to believe they were investing with a regulated entity and that their funds would be deposited in a regulated trading account. It wasn't advertised to investors that their funds would be moved/invested into unregulated cryptocurrency. Furthermore, approximately 20% of the funds moved to the cryptocurrency exchange platform weren't subsequently forwarded to the Forex trading account.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via Forex trading.
- The returns from the Forex platform are significantly less than the returns paid to investors, suggesting returns were funded using other investors' money and weren't profits made from investing.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was sent to V was not used for its intended purpose. The evidence suggests that Mrs B wasn't involved in a failed investment but a scam.

Returning to the question of whether, in fairness, I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. There is no certainty that any prosecutions will result from the FCA's investigations nor what, if any, new light they would shed on the evidence and issues I've discussed.

So, as I'm satisfied Mrs B has most likely been the victim of an APP scam, I've considered whether Mrs B should be reimbursed or not under the CRM Code.

Is Mrs B entitled to reimbursement under the CRM Code?

I've considered whether First Direct should reimburse Mrs B under the provisions of the CRM Code. There are generally two exceptions to reimbursement:

- Mrs B made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or V was legitimate.
- Mrs B ignored what the CRM Code deems to be an 'Effective Warning'

And importantly, when assessing whether it can establish these things, First Direct must consider whether they would have had a 'material effect on preventing the APP scam'.

I have considered whether Mrs B had a reasonable basis to believe V was legitimate and was providing a genuine investment product.

In doing so, I have given careful consideration to how Mrs B was introduced to V with Mrs B's advising that it was through her son (and some of his friends) who had already invested in V. And I think that is an important consideration here in determining whether Mrs B had a reasonable basis of belief that V was legitimate.

Mrs B says her son had invested £20,000 and his investment was seemingly making the profits expected, as were his friends' investments, and there had been successful withdrawals made from V. I also have to bear in mind Mrs B wasn't an experienced investor, and it is understandable that she placed weight on what she was seeing and hearing about V from her son and his friends. I can understand why it would have seemed genuine to Mrs B, due to this first-hand family and friend testimony. When I consider this, and couple it with the sophistication of this scam, so the account opening process, V's website, the client portal and the ability to track her supposed investment, I can understand why Mrs B felt the investment was a genuine one at the time. Mrs B has said she wasn't too sure of what returns she was promised but felt it was around 10%. As an inexperienced investor I don't think these returns would have necessarily stood out as too good to be true. This, alongside the sophistication of the scam and the ability to see how her investments were performing on a daily basis on V's platform and coupled with the evidence that Mrs B says she saw of the returns her son and his friends had made (which is consistent with other victim's testimony), to my mind outweighs the concerns that Mrs B perhaps ought to have had about the returns being claimed.

On balance, I think there was enough to reasonably convince Mrs B at the time that this was a genuine investment company. With this in mind, I don't think Mrs B made the payments without a reasonable basis of belief that V and the investment itself was genuine.

I have also considered First Direct's comments that Mrs B didn't choose the relevant payment purpose when making the payments. However, I'm mindful the CRM Code explains that a firm, in assessing whether an exception to reimbursement applies such as ignoring an effective warning, has to take into account whether it would have had a 'material effect on preventing the APP scam'. Here Mrs B had no reason to believe that V wasn't a genuine investment company at the time. So even if had Mrs B selected a more accurate payment purpose or even if First Direct were to have provided a more relevant or tailored warning to Mrs B about investment scams – I think it is fair to say it wouldn't have had a material effect on preventing the scam such was her belief in V and that things were legitimate. So, I do not think an exception to reimbursement can be applied for this reason in any event.

Overall, I do not consider it necessary to await the outcome of the FCA investigations into V and any subsequent proceedings. I am satisfied, based on the evidence available, that Mrs B was more likely than not the victim of an APP scam. And her fraud claim is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply. So, it follows that I'm satisfied First Direct should reimburse Mrs B under the provisions of the CRM Code. And First Direct is entitled to take, if it so wishes, an assignment of the rights to all future distributions to Mrs B under the processes relating to the FCA investigation and any potential compensation that may be returned to victims.

In relation to compensatory interest, I think it should be paid from the date our Investigator gave their view of this complaint (24 January 2025). I'm satisfied that the information disclosed in that view was sufficient for First Direct to conclude that Mrs B had been the victim of a scam and that it wasn't necessary to wait for the outcome of any ongoing investigations. Mrs B through her representative has agreed to this also.

Putting things right

I uphold this complaint. HSBC UK Bank Plc, trading as first direct, should pay Mrs B:

- £15,000 lost to the scam orchestrated by V; and
- 8% simple interest on that amount from 24 January 2025 to the date of settlement.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 7 July 2025.

Matthew Horner
Ombudsman