

The complaint

Mr and Mrs P complain that HSBC UK Bank Plc trading as first direct bank ('First Direct') won't reimburse the money they lost to an investment scam.

They're represented by a Claims Management Company. For simplicity, I'll refer to Mr and Mrs P throughout this decision.

What happened

The background is known to both parties, so I won't repeat all the details.

In summary, Mr P was part of a group, advertised by what seems to be a legitimate partnership ('F'), offering 'deal sourcing' and 'advice' on property investment. Through that group, Mr and Mrs P were introduced to a scheme ('C'). C was a scheme claiming to offer investments in specific property units on the understanding that they'd be refurbished and rented out for social housing through contracted councils and housing authorities.

Mr and Mrs P say they conducted extensive research into C, including checking Companies House, online reviews by satisfied 'investors', and articles and information which was corroborated by others, including F. They say that, believing C was a legitimate scheme, they transferred £13,500 on 9 September 2024 from their joint First Direct account to C. They were provided with an investment certificate (in the name of Mrs P) and expected to receive monthly returns – and a total return on investment of £21,600 over 36 months.

Mr and Mrs P say they received no returns and that they realised C was a scam when someone alerted them. In January 2025, they complained to First Direct and then referred the matter to our Service. In April 2025, First Direct declined to provide a refund, informing Mr and Mrs P it was awaiting industry guidance and cases regarding C were paused. It said it couldn't guarantee an outcome pending the results of a police investigation into C.

Our investigator upheld the complaint. She was persuaded there was enough evidence to show Mr and Mrs P's payment to C met the Contingent Reimbursement Model ('CRM Code') definition of an Authorised Push Payment (APP) scam. And there was no need to await the outcome of the police investigation. She was also persuaded Mr and Mrs P were eligible for a full refund of their loss under the CRM Code. She said First Direct should refund Mr and Mrs P's loss – and pay interest to compensate for its delay in providing a refund.

Mr and Mrs P accepted that outcome. First Direct didn't. In brief, it said it's entitled to delay giving its outcome under R3(1)(c) of the CRM Code. Given the complexities, the full facts are something the criminal investigation will ascertain. Those full facts must be considered to reach a conclusion based on the facts, not on 'balance of probabilities', as to whether there was an intent to scam at the relevant time. There's a significant risk that our Service reaching a premature outcome may prejudice future criminal proceedings. It said if C was a scam, it is unclear from which point, if any, there was an intent to scam. It's unsafe to apply a broad-brush approach. This further demonstrates the need to await the outcome of the police investigation to determine if there's evidence of intent to scam from a point in time.

As the matter couldn't be resolved informally, it's been passed to me to decide.

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've decided to uphold it for similar reasons as the Investigator.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals a customer authorises, in accordance with the Payment Services Regulations (the 2017 regulations) and the terms and conditions of the customer's account. It's not in dispute Mr and Mrs P authorised the payment in question so they're presumed liable for their losses in the first instance. But that's not the end of the matter.

First Direct was a signatory to the CRM Code which required firms to pay refunds to victims of APP scams in certain circumstances. And firms must normally respond to a claim under the CRM Code within 15 days. Here, from the information I've seen, Mr and Mrs P submitted a complaint instead. But I think the complaint was sufficient to notify First Direct of a claim.

First Direct says it's entitled to decline giving an answer in line with R3(1)(c) of the CRM Code. This said: *"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."*

I've thought carefully about First Direct's reasons for saying our Service should hold off making a decision – including its comments that police enquiries appear complex, that our Service doesn't have the full facts, and that it's not safe or reasonable to reach conclusions on the 'balance of probabilities'. However, while there's an ongoing police investigation into C, the specific details haven't been shared with our Service. It's unclear if any proceedings will concern charges that'll have a significant bearing on the issues relevant to this case.

As First Direct is also aware, any criminal proceedings that may take place in connection with C will be based on the criminal burden of proof – whereas our Service makes decisions on the 'balance of probabilities'. And the CRM Code's publisher, the Lending Standards Board, has provided guidance that the criminal standard of proof ('beyond reasonable doubt') isn't required. So, in line with our general approach, I only need to be persuaded on a 'balance of probabilities' – the same standard of proof that's required in civil cases.

I'm also not persuaded it'd be appropriate to delay giving an outcome on the basis that, as First Direct suggests, there's a significant risk it may prejudice criminal proceedings. As before, the specific details of any police investigation haven't been shared with us. I don't consider the risk of 'refunded' victims choosing not to testify to be significant or supported by evidence, such that it's necessary to delay giving Mr and Mrs P our answer. First Direct will also know our Service was set up to resolve complaints quickly and with minimum formality. We don't know how long the police investigation will take. It could be months or years. I don't think it'd be appropriate to delay giving our answer, for an undefined period of time, unless doing so is likely to significantly help me decide this issue.

What I need to decide here is whether, on balance, Mr and Mrs P were scammed by C. In looking at the information we already know about C and Mr and Mrs P's dealings with it, I'm not persuaded that the outcome of the police investigation is likely to have a significant bearing on this decision. I'm satisfied there's already enough to show the payment in question meets the CRM Code's definition of an APP scam. This is defined as:

“Authorised Push Payment scam, that is, 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.”*

I'm satisfied Mr and Mrs P intended to pay C for what they believed was a legitimate purpose (a property investment). So, I've gone on to consider whether C's intended purpose was broadly aligned with Mr and Mrs P's at the time their payment. And, if not, whether this was the result of a dishonest deception by C. For all the reasons below, I'm persuaded C fraudulently deceived Mr and Mrs P into making their payment at the time it was made.

C held accounts which show around £6,000,000 being spent in a way that appears consistent with property development. But it also received around £20,200,000 from investors. Given C's standard unit price of £13,500, that means it would need to have entered around 1,500 property agreements. But the outgoing payments aren't consistent with C paying for rent, refurbishments and furnishings for this many agreements.

C claimed to hold contracts with local authorities – as they would need to have done to fulfil the investor agreements. But their beneficiary statements show no incoming payments from local authorities or housing providers.

Additionally, several local authorities have confirmed they didn't have a working relationship with C – with one confirming an invoice C used to supposedly demonstrate their working relationship was forged. A director of C was also removed from Companies House due to their identity being stolen. They had no connection to C. This speaks to a dishonest deception by C.

Our service has seen evidence that at least six different units were sold to multiple investors. This comes from complainants providing the individual property addresses they thought their investment was purchasing across around 100 complaints. This information also shows around half of those addresses were in buildings where the owners have confirmed they didn't have a relationship with C.

We've also seen instances where the properties remained derelict after the investment was made or remained under construction when they were supposedly generating an income. All of this makes it seem unlikely C intended to use Mr and Mrs P's payment for genuine property development investments.

Again, looking at C's accounts, we can see around a third of the investment capital wasn't used for the purpose of securing and developing properties to be used for social housing – ranging from cash withdrawals, to payments to individuals involved in operating C, to paying jewellers, restaurants and more. There are further substantial withdrawals and payments which the purpose for is unknown.

Around £440,000 C received could be legitimate income, although none of this came from local authorities or social housing providers. But in comparison, £2,500,000 was paid to investors. It's clear this didn't come from genuine income – strongly indicating C were operating a Ponzi scheme.

Overall, there's little to suggest any transactions are consistent with C completing property development for the benefit of investors, and much more to suggest C wasn't using

investors' funds for the intended purpose. Even if any of the funds C received were used for property development, it seems likely this was done with the intention of encouraging further investment as part of an overall scam. I note First Direct's comments about establishing C's intent at the time. And, for all these reasons, considering also when Mr and Mrs P made their payment, I'm satisfied Mr and Mrs P's payment to C meets the CRM Code's definition of an APP scam – and it's unlikely the outcome of the police investigation will impact this.

The starting position under the CRM Code is that a firm should refund victims, as I've found Mr and Mrs P were, of APP scams. However, there are exceptions under the rules which firms can rely on, if applicable, to decline reimbursement. It's for First Direct to establish if exceptions apply. It hasn't done so here but I've considered them in any event.

Under the CRM Code, a firm can choose not to reimburse a customer if they ignored an 'effective warning'. Or if they made the payment without having a reasonable basis for believing that the payee was the person they were expecting to pay; the payment was for genuine goods or services; or the person or business with whom they transacted was legitimate. Further exceptions within the CRM Code aren't relevant in this case.

The CRM Code sets out that 'effective warnings' should be risk based and, where possible, tailored to the APP scam risk indicators. To be 'effective' the warning should, as a minimum, be 'Clear', 'Impactful' and 'Specific'. First Direct hasn't provided evidence of any warnings shown at the time of the payment. Nor has it argued that Mr and Mrs P ignored an 'effective warning'. So I can't say Mr and Mrs P unreasonably ignored an 'effective warning'.

I'm also satisfied Mr and Mrs P had a reasonable basis for belief when the payment was made. As far as they were concerned, they found C through F which appears to be operating legitimately. They were reassured by positive reviews they'd seen and knew of other satisfied 'investors'. They received professional-looking brochures. Mrs P was provided with an agreement and an 'investment certificate'. They saw C was listed with Companies House. And while the promised returns could be considered generous, I don't think they were excessively high. I can appreciate why Mr and Mrs P thought they seemed reasonable in the context of this sophisticated scam – particularly when (as set out in its brochure) C was in partnership with government agencies to ensure stable and consistent demand.

Overall, I'm satisfied that Mr and Mrs P made the payment with a reasonable basis for believing C was a legitimate business. Their investment turned out to be an APP scam. First Direct hasn't shown any exceptions to reimbursement apply under the CRM Code. So I'm satisfied it should refund Mr and Mrs P's payment in full under the provisions.

In terms of interest, the Investigator recommended 8% simple per year on the payment from the date the claim was declined or 15 days after the claim was made, whichever is earliest. I've seen the Investigator made First Direct aware that Mr and Mrs P had made their complaint to it in January 2025. Mr and Mrs P have shown this was sent on 22 January 2025. I think it's fair to take that as the date of the 'claim'. I'm also satisfied there was sufficient evidence available at the time for First Direct to review and accept their claim.

Putting things right

Outside of the CRM Code, I think it's unlikely an intervention at the time of payment would have positively impacted Mr and Mrs P's decision-making. I don't think either party would have likely uncovered sufficient cause for concern about C such that Mr and Mrs P would have chosen not to proceed.

But, as I've found Mr and Mrs P should be reimbursed under the provisions of the CRM Code, to put things right, HSBC UK Bank Plc trading as first direct bank should:

- refund the disputed payment Mr and Mrs P made to C
- pay 8% simple interest per year on this amount, running from 15 days after 22 January 2025. This is to compensate them for the loss of use of this money from the point at which it should have been refunded.

If HSBC UK Bank Plc trading as first direct bank considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs P how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

To avoid the risk of double recovery, HSBC UK Bank Plc trading as first direct bank is entitled to take (if it wishes) an assignment of the rights to all future distributions that arise in relation to scam payment, such as from criminal proceedings before paying the award.

My final decision

I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 9 January 2026.

Thomas Cardia
Ombudsman