

The complaint

Mr and Mrs C complain about HSBC UK Bank Plc trading as First Direct.

They say that Mr C fell victim to a scam and would like First Direct to refund them the money they have lost as a result.

What happened

Mr and Mrs C hold a joint account with First Direct – however as Mr C was the one that made the payment concerned, for simplicity, I will refer to Mr C in this decision.

Mr C came across an investment opportunity with a company I will call P through a former work colleague he had known for over ten years who had also made an investment with P.

Mr C understood that P dealt with electrical lighting for medicinal cannabis. He searched online for P's manufacturing company and checked Companies House.

The investment involved a loan to P for development of the project in return for shares in P. The agreement was that the loan would be for 12 months, and that Mr C would also receive dividends depending on the generated revenue. He made a payment of £10,000 to P.

Mr C now says that P was a scam – he made a complaint to First Direct and asked it to refund him the money he has lost.

First Direct hasn't made a decision on whether to reimburse Mr and Mrs C. Instead, First Direct has sought to rely on R3(1)(c) of the CRM (Contingent Reimbursement Model) Code and told us the case is subject to investigation by a statutory body and still awaiting on the outcome of the case, but it gave Mr and Mrs C referral rights to this Service.

Our Investigator looked into things and thought that Mr and Mrs C's complaint should be upheld.

Mr and Mrs C accepted this, but First Direct did not. It said that the case should remain ringfenced pending the conclusion of the police investigations and that our view was premature.

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.

When considering 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 relevant time.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs) and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even though they authorised the payment.

The CRM Code

The CRM Code was a voluntary code for reimbursement of APP scams which required signatory firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances. First Direct was a signatory to the CRM Code at the time the payment in dispute was made.

The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP (authorised push payment) scam. Under the CRM Code, an APP scam is defined as:

“...a transfer of funds...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) (ii) The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

The CRM Code is also quite explicit that it doesn't apply to all push payments. It says:

“DS2(2) This code does not apply to:

(b) 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.”

This makes it clear that “private civil disputes” between the paying bank's customer and a legitimate supplier aren't included, even if the relevant goods or services were never received or were defective. To take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which the payment was made.

But that doesn't mean that a person claiming reimbursement under the CRM Code needs to meet the criminal standard of proof (“beyond reasonable doubt”). In line with the general approach taken by our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases. So, I would need to see evidence that convinces me it's more likely than not that a criminal fraud has occurred, and therefore that Mr C has lost his money to an APP scam. If I do find that is the case, then the CRM code would apply, and Mr C would be entitled to reimbursement of his loss unless First Direct could show that any of the exceptions to reimbursement set out in the code apply.

Can First Direct delay making a decision under the CRM Code?

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be

delayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision.

R3(1) of the CRM Code says:

"Firms should make the decision as to whether or not to reimburse a Customer without undue delay, and in any event no later than 15 Business days after the day on which the Customer reported the APP scam."

To date, First Direct hasn't made a decision on whether to reimburse Mr C. Instead, First Direct has sought to rely on R3(1)(c) of the CRM Code, which 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."

There is an ongoing police investigation into P, the specific details of which haven't been shared with this service. So, I've carefully considered if the outcome of the police investigation is reasonably likely to impact First Direct's reimbursement decision and therefore, whether it's fair to rely on R3(1)(c) of the CRM Code when deferring to give Mr C an answer.

Is it appropriate to determine Mr C's complaint now?

I understand that the police investigation is still on-going although its progress is unknown. I also understand that the liquidator's enquiries are continuing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues based on evidence already available. And it may be that investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be of little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

As for investigations by liquidators, these are normally made for the purpose of maximizing recoveries for creditors. Sometimes they lead to civil proceedings against alleged wrongdoers, or against allegedly implicated third parties. But the claims may not be relevant to the issues on the complaint. And, even if they are potentially relevant, such claims are quite often compromised without a trial and on confidential terms, so the outcome is of little benefit to our service.

In order to determine Mr C's complaint, I must ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that he 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 Mr C first raised his claim with First Direct in 2024, and I need to bear in mind that this service is required to determine complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr C an answer for an unspecified length of time would be appropriate unless the delay is truly required for the sake of fairness to both

parties. So, unless a postponement is likely to help significantly when it comes to deciding the issues, bearing in mind the evidence already available to me, I'd not be inclined to think it fair to put off the resolution of the complaint.

I'm also aware that P is under liquidation. This might result in some recoveries for P's creditors, or even theoretically its shareholders. It's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive if there are secured creditors, given recoveries would initially be for any secured creditors. That said, 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 Mr C under the liquidation process in respect of this £10,000 investment before paying anything I might award to him on this complaint.

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

Has Mr C been the victim of an APP scam, as defined in the CRM Code?

As referenced above, First Direct was a signatory to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The CRM Code only applies if the definition of an APP scam is met, as set out above. As I've also set out above, the CRM Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So, it wouldn't apply to a payment made for a genuine investment that subsequently failed. As there's no dispute that Mr C's funds were transferred to the intended recipient, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, in order for there to have been an APP scam, Mr C must have transferred funds to P for what he believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).

I've therefore considered whether Mr C's intended purpose for the payment was legitimate, whether the intended purposes of Mr C and P were substantially aligned and, if not, whether this was the result of dishonest deception on the part of P.

Mr C lent a sum of money to P in December 2021 which he believed would be used for funding the project. He understood this loan would be repaid after a fixed period. He also understood that he had acquired shares in P and would receive dividends in the short term if certain conditions were met. Mr C has said he reviewed the investment material and satisfied himself that P was legitimate before deciding to invest.

I've then considered whether there's convincing evidence to demonstrate that P's purpose of the payments was fraudulent. That is, whether P's purpose must have been to misappropriate Mr C funds or otherwise deprive him of this money, rather than to use it for the purpose believed by Mr C.

Our service contacted the police force investigating the matter as well as the liquidator overseeing P's and associated companies' liquidation. Although attempts to obtain further information from the police were unsuccessful, the liquidator shared their preliminary findings from investigations to date. We've also had confirmation from the liquidator that their findings can be disclosed in my decision as far as they are relevant to the complaint.

The following observations the liquidator has made about P and its main director – Mr N – are of particular relevance to this complaint:

- following P's incorporation in September 2017, while an undischarged bankrupt, Mr N acted as a de facto director of P and promoted the company as a successor to another company he used to be a director of before it went into liquidation. Mr N was appointed a director of P in June 2018, prior to his discharge from bankruptcy. As an undischarged bankrupt, Mr N was prevented from being involved in the formation or management of any company.
- Between September 2017 and July 2018, when Mr N was an undischarged bankrupt, nearly 34% of the investor's money was drawn out by him via another company he was a director of, or to his personal account, or otherwise applied towards lifestyle spend.
- Between March 2018 and July 2019, Mr N made rental payments every month in respect of the property he and his family were living in. And between September 2018 and September 2019, nearly 32% of investments into P were applied towards purchasing that property.
- Between January 2020 and April 2020, repayments to investors were made which were drawn from new investor funds. The pattern of using new investor funds to repay historic investors continued subsequently.

Given the substantial size of these payments, the fact that they preceded Mr C's investment, and Mr N's misconduct as a bankrupt, I consider this is powerful evidence that P's true role was to dishonestly raise money from investors to fund Mr N's lifestyle and make repayments to earlier investors.

Another investor, who has since also brought a complaint to our service, has provided an email they received from one of the former directors of the company which was contracted to grow medicinal cannabis in the overseas jurisdiction. I note that the director has said his company had significant funding problems with P, from as early as November 2019. The email goes on to say that by that point, his company had used all its capital and had committed \$2.5 million. It no longer controlled the land and had difficulties raising additional funds. Although P promised to lend it \$1 million, that funding never arrived. The site was left in a state of disrepair, and the director's company in ruins. The director concludes the email by saying he believes that P was set up as an investment fraud, given the initial contract signed by both parties for the project was never funded.

A review of bank statements of P's account from the relevant time supports the director's claim that the promised sum wasn't sent. From what I've seen, I can only identify around £83,000 being sent to the company during the relevant period. This leads me to conclude that P had no intention – by the time of Mr C's payment – to fulfil its obligations in relation to the project, and therefore it also had no intention to use Mr C's funds as it had led them to believe it would. Instead, based on what the liquidator has noted, it appears that Mr C's funds were used largely for Mr N's personal benefit and repayments to earlier investors.

Our service has also seen an email from the general manager of the company that P engaged with in 2018 to carry out construction at the overseas site. The email states that the said company experienced multiple delays in receiving payments, and in early 2021 it was asked to stop all work immediately and leave the site. At the time, construction hadn't finished, and the site didn't have electricity or water. The general manager also states that to his knowledge, the site has never had any grow lights installed, nor grown cannabis. The email from the former director of the company which was contracted to grow medicinal cannabis corroborates that evidence, stating that lighting was never provided nor cannabis grown on the site.

The information provided by the third parties which I've mentioned above is completely at odds with the letter P sent to shareholders in November 2021 which included 'sensitive' images of the 'up and running' facility, one of which purported to show the cannabis flower cultivation grow room. One of the investors has alleged that these images were taken from third-party websites. And a review of the website links the investor claims the images were taken from does support this allegation. While P's newsletter was written after Mr C made his investment, I do consider it relevant to the extent that it provides evidence of P's willingness to deceive investors about the use of their funding.

I also understand that in November 2021, P agreed to make a payment of £2.5 million to another company for the deal it had entered into – to supply P's proprietary lighting in return for a percentage of that company's revenue. When the funds didn't arrive, Mr N claimed to have sent the payment and provided a screen shot of the payment confirmation to evidence this. Our service has seen evidence to suggest that this was not true, no payment was sent from the claimed account.

We have also been provided with an email from the police to one of the investors where they have confirmed that none of the accounts held by P, connected companies, or Mr N, had a balance that could have cleared that payment.

I consider that this evidence supports a conclusion that Mr N and P were more than capable of the level of dishonesty required for an APP scam, such as the one Mr C alleges that he fell victim to.

Overall, after having carefully considered the information available, and given the findings I've made above, I'm persuaded that P's purpose was not aligned with what Mr C believed when he made the payment in 2021. Mr C made the payment believing his purpose was to fund the cannabis cultivation project, whereas, in truth, P had the dishonest intention of diverting a substantial part of the money to support Mr N's lifestyle, repay earlier investors, and, as and when necessary, deceiving investors that P was establishing and conducting viable business operations.

So, I think the circumstances here meet the definition of an APP scam as set out under the CRM Code.

Returning to the question of whether in fairness I should delay reaching a decision pending developments in the liquidation or police enquiries, I've 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. The liquidators have already expressed their views. And as regards the police's investigations, there's no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

Is Mr C entitled to a refund under the CRM code?

Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an APP scam, like Mr C. But a firm may choose not to reimburse a customer if it can establish that any exceptions to full reimbursement apply. As First Direct have not provided any evidence in relation to this complaint, I have not seen anything that indicates Mr C ignored an effective warning in relation to the £10,000 payment. I therefore do not think an exception to full reimbursement can be applied, based on what I've seen so far.

I've gone on to consider whether Mr C had a reasonable basis to believe the funds were for genuine goods or service and the business he was paying was legitimate. The investment material I've reviewed appears professional, and there was nothing in the public domain at the time about P from which Mr C could have reasonably inferred that a scam was taking place. In addition, the investment literature made it clear that returns weren't guaranteed. I consider this would have made the investment appear genuine and would likely have alleviated any concerns arising from the advertised high returns. I also note that Mr C's friend, as well as other individuals, had also already invested in P prior to him doing so, which would have added an air of legitimacy to the company.

With this in mind, I don't think any of the exceptions to reimbursement under the CRM Code apply here. It follows that I think First Direct should refund the money Mr C lost in full.

Putting things right

I've thought carefully about whether interest should be added to the refund Mr C is due from First Direct. Having considered the available information, including submissions from third parties which I consider the bank could have obtained if it wanted to when it received Mr C's claim, I consider that First Direct should have reimbursed Mr C when he made a claim under the Code.

With that in mind, in order to put things right, HSBC UK Bank Plc trading as First Direct needs to:

- refund to Mr C the disputed payment of £10,000 made as a result of the scam; and
- pay simple interest at 8% per year on the amount refunded (less any tax lawfully deducted), calculated from the date the bank received the claim to the date of settlement.

I am aware that our Investigator set out that First Direct should pay 8% simple interest from the date that First Direct declined Mr and Mrs C's claim – however, as First Direct didn't decline the claim, but sought to delay its decision – it should pay 8% simple interest from the date it received the claim.

As P is now in liquidation, it's possible Mr C may recover some further funds in the future. In order to avoid the risk of double recovery, First Direct is entitled to take, if it wishes, an assignment of the rights to all future distributions under the liquidation process in respect of this £10,000 investment before paying the award. If the bank elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr C for his consideration and agreement.

My final decision

I uphold this complaint. HSBC UK Bank Plc trading as first direct should put things right as set out above.

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

Claire Pugh
Ombudsman