

The complaint

Mrs M complains that HSBC UK Bank Plc trading as first direct ('First Direct') hasn't refunded the money she believes she lost to an authorised push payment ('APP') scam.

What happened

The circumstances of the complaint are well-known to both parties. So, I don't intend to repeat these in detail here. However, I'll provide a brief summary of what's happened.

In March 2022, Mrs M made an enquiry with a company (which I'll refer to as 'Company L'), about whether it would be interested in publishing a book she'd written. Company L said it was interested in publishing Mrs M's book and quoted £2,495 to publish it.

Mrs M and Company L came to an agreement where the cost of publishing the book would be shared between them, with Mrs M paying £1,247 and Company L meeting the remaining cost of £1,248. Company L also agreed to pay up to £1,000 towards marketing the book once published. Any income generated from the publication of the book would be split equally between Mrs M and Company L.

Mrs M paid £1,247 to Company L in June 2022. In July 2022, Company L said it would aim to publish Mrs M's book within 12 months, with a full edit being made available to Mrs M prior to the publication. In June 2023, Company L told Mrs M that it was unable to meet the 12-month deadline for publishing her book. It sought to rely on a "*force majeure*" clause in its contract with Mrs M, which allowed it to extend the deadline due to unforeseen circumstances that were out of its control. However, Company L failed to explain the reason for the delay.

As she hadn't received what she paid for, Mrs M reported the situation to First Direct in October 2023 and asked for a refund. First Direct declined to reimburse Mrs M. It considered the situation to be a buyer/seller dispute between Mrs M and Company L and not an APP scam, which meant it wasn't responsible for reimbursing Mrs M's loss.

Mrs M subsequently became aware that many other individuals had also paid Company L to publish their books and not received what they paid for. So, in November 2024, Mrs M asked First Direct to reconsider her claim for a refund. First Direct refused to reconsider Mrs M's claim and so she made a complaint.

In its response to Mrs M's complaint, First Direct said nothing had changed since it had refused to reimburse Mrs M in October 2023. So, First Direct said it wasn't upholding the complaint or offering to reimburse Mrs M.

Unhappy with First Direct's response, Mrs M referred her complaint to this service. Our Investigator considered the complaint but didn't uphold it. In summary, they said they weren't persuaded Company L had intended to scam Mrs M when she made her payment and so they didn't think First Direct needed to refund Mrs M's loss.

Mrs M didn't accept our Investigator's opinion. She pointed out that she was aware of multiple customers of Company L who had received refunds from their own banks. As an agreement couldn't be reached, the complaint has 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.

Mrs M has made some detailed submissions in support of her complaint. I've read and considered everything she's sent in, but I don't intend to respond in similar detail. I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

First Direct hasn't reimbursed Mrs M because it thinks her dispute with Company L is a civil dispute and not an APP scam, which means it can't be held responsible for the loss. For me to say that decision was wrong – and First Direct should've refunded Mrs M – I'd first need to be satisfied that Mrs M has been the victim of an APP scam.

I appreciate that individuals, in similar circumstances to Mrs M, may have received a refund of their losses having complained separately to their own banks about payments made to Company L. But I can't comment on the outcome of other claims or complaints. I can only consider the circumstances of the complaint before me when deciding what's fair.

At the time Mrs M made the disputed payment, First Direct was signed up to the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code. The CRM Code provided additional protection from APP scams.

However, the CRM Code didn't apply to every APP which ultimately resulted in a loss for the customer. For Mrs M's claim to be considered under the principles of the CRM Code, I'd need to be persuaded that it applies in her circumstances.

The CRM Code can only apply where the victim's payment meets the CRM Code definition of an APP scam. The relevant definition for this case would be that Mrs M transferred funds to another person (or company as is the case here) for what she believed was a legitimate purpose, but which was in fact fraudulent.

I've considered the evidence available, but I can't fairly conclude that Mrs M has been the victim of an APP scam in line with this required definition. As a result, I'm not persuaded it was unfair or unreasonable for First Direct to conclude that Mrs M's situation is a civil dispute between her and Company L. This means First Direct isn't required to reimburse Mrs M. I know this outcome will come as a disappointment to Mrs M, so I'll explain why.

According to Companies House, Company L was incorporated in July 2013. Between its date of incorporation and the date Mrs M sent funds to it, Company L had successfully published a number of books which have been made available to purchase from a number of retailers. Company L published other books in 2022 (the year Mrs M paid Company L) and more books in 2023 and 2024. This gives the impression that Company L has been operating legitimately and providing a service to other customers.

Prior to contacting Company L, Mrs M says she carried out research. She found Company L's website, its page on a well-known social media site and saw it had positive online reviews. After Mrs M initiated contact with Company L, the response she received was professional, giving no indication Company L wasn't engaged in publishing books.

It took Company L several weeks to respond to Mrs M after her enquiry. If its intention was to scam Mrs M, it seems more likely that it would've engaged with her more quickly. Company L had several options for publishing Mrs M's book, and she doesn't appear to have been pressured into which option she ultimately chose, or pushed towards the most expensive option, which a scammer might be expected to do to maximise their financial gain. Mrs M was also given the option of paying in several ways, some of which would've offered protection against non-publication of her book. So, on the face of it, Company L appears to have been operating legitimately.

Mrs M signed a professional looking contract, which set out the terms of the agreement. I understand that there are clauses within that contract that she has issue with and that Company L have sought, potentially unfairly, to rely on when failing to meet the publication deadline. Company L also hasn't fulfilled its obligations under the contract to publish Mrs M's book. So, I can certainly understand why Mrs M considers Company L has scammed her. But a contractual dispute such as this could also be the result of a civil dispute between the parties, rather than evidence of fraud.

There are several explanations for why Mrs M's book wasn't published. It's possible that Company L never intended to publish it and simply stole her money. But it's also possible that Company L had every intention of publishing the book but was unable to satisfy its contractual obligations due to having taken on too much work or having a severe cashflow problem as two possible examples.

Company L has also argued that it was the victim of a substantial theft, orchestrated by a former employee, over a period of several months, which if true, would likely have had serious implications for Company L's ability to meet its contractual obligations with Mrs M and its other customers.

I can't say for certain which possibility applies here. When I can't say for certain, I have to think about what's more likely than not, based on the balance of probabilities.

To help me reach a conclusion on whether Mrs M has more likely than not been the victim of an APP scam, I've carefully considered the information that Company L's bank has provided.

Having reviewed Company L's bank statements, I can see transactional activity that's consistent with Company L having been a legitimate publisher. Company L was receiving funds from an online retailer and passing funds on to authors it had successfully published books for. There are also payments which appear to relate to Company L hosting book events.

However, there is also a substantial amount of personal expenditure that doesn't appear to relate to book publication or marketing, and funds have been withdrawn to third party accounts. Also, it's clear from the statements that Company L entered into a large number of contracts and received a high number of payments, yet only published a small number of books.

Mrs M has provided a link to an online article about Company L, which supports Mrs M's claims there is large number of individuals who paid Company L without their books being published. Other individuals have claimed their books were published by Company L but they haven't received any royalties.

Company L was also investigated by, and the focus of, a national television programme. This programme did highlight one customer wasn't happy with the length of time it took to receive an edited version of their book, and they weren't happy with the work that had been done by Company L.

The programme also highlighted that Company L's contracts allowed it to keep customers' funds if they decided to terminate the agreement and Company L would be allowed to keep the rights to publish the books regardless. It didn't go as far as to say Company L had taken customers' funds with no intention of publishing their books and the allegations made within the programme focus more on unfair contractual terms, rather than suggesting Company L was a scam.

Whilst I appreciate the online article and television programme paint Company L in a bad light and allege questionable business practices, they don't conclusively demonstrate that Company L had no intention of publishing Mrs M's book – or other individuals that paid it for this service.

I accept that I've seen no evidence to suggest that Company L has done any work in exchange for the payment Mrs M made over three years ago. However, I've also seen no evidence to show that it hasn't, and this service doesn't have the power to require Company L to provide evidence. So, I can't say for certain either way if Company L has started the editing and publishing process for Mrs M.

However, I'm very aware that Company L has been the subject of a criminal investigation and its former directors are due to stand trial in the future. However, the details of that investigation haven't been shared with this service. So, whilst I appreciate the police believe there is a case to prove wrong doing on behalf of Company L, as the specifics of the allegations against Company L (and its former directors) haven't been shared, I'm not persuaded that's enough to demonstrate that Company L had no intention to publish Mrs M's book at the time she made the payment.

I have natural sympathy for Mrs M and the other customers of Company L whose books haven't been published. However, I'm not persuaded there's sufficient evidence currently available to say Company L obtained Mrs M's payment for a fraudulent purpose or that First Direct acted unreasonably in treating Mrs M's claim as a civil dispute between her and Company L.

I recognise that the circumstances may change in the future and new material evidence may come to light, for example after the court case. Should that happen, Mrs M may renew her complaint and ask First Direct to reconsider her claim for a refund.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 5 November 2025.

Liam Davies
Ombudsman