

## **The complaint**

Mrs J complains that HSBC UK Bank Plc trading as first direct ('First Direct') declined to reimburse money she says she lost as a result of a scam.

## **What happened**

The circumstances of this complaint are well known to both parties, so I will not go into every detail of what happened here. But in summary, Mrs J came across an investment opportunity online with a company which I will call 'B'. B offered investments in luxury freehold lodges which would yield an annual return, with a buy back option at the end of the five year term. After researching B online, and asking a legally qualified colleague to look over the paperwork, Mrs J was persuaded to invest. She decided to invest in a two bedroom holiday lodge, and so sent a payment of around £64,000 to B.

Mrs J received returns as expected until 2024, when she was told that there had been a disagreement on site that was impacting the timeliness of the payments. She then discovered that the investment company had gone into liquidation. Mrs J believed she had been scammed, and so contacted First Direct to ask them to reimburse her losses. First Direct declined to do so, on the basis that it said that what happened represented a private civil dispute rather than a scam.

Unhappy with their response, Mrs J escalated her concerns to our service where one of our investigators looked into what had happened. They did not recommend that Mrs J's complaint should be upheld, on the basis that they agreed that what happened amounted to a private civil dispute, rather than a scam. Mrs J did not agree, and as no agreement could be reached the case 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 J's representatives have provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of her complaint. This is not meant to be a discourtesy to her, and I want to assure her I have considered everything she has submitted carefully.

When considering what is fair and reasonable, I am 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 payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's accounts. 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 is of particular relevance to this case. It is a voluntary code which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this in all but a limited number of circumstances. First Direct was a signatory to the Code at the time the payment in dispute was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An 'APP scam' is defined within the Code at DS1(2)(a) 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”*

The CRM Code is also clear at DS2(2)(b) that it 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”*

If I conclude that the payment here meets the required definition of a scam then Mrs J would be entitled to reimbursement, unless First Direct has shown that any of the exceptions set out in R2(1) of the Code apply.

The LSB has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached. So, in order to determine Mrs J's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that she was the victim of a scam rather than this being a failed or bad investment.

*Has Mrs J been the victim of a scam, as defined in the CRM Code?*

The Code does not apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it would not apply to a genuine investment that subsequently failed. And the CRM Code only applies if the definition of an APP scam is met, as set out above.

I do not consider the first part of the definition quoted above (DS(2)(a)(i)) is met in this case. This is not in dispute. But what is in dispute is whether Mrs J's payments meet DS1(2)(a)(ii).

So I have gone on to consider if the evidence suggests that her intended purpose for the payments was legitimate, whether the intended purposes she and B had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of B.

From what I have seen and what Mrs J has told us, I am satisfied that she made the payments with the intention of investing. I have not seen anything to suggest that she did not think this was a legitimate venture – and as First Direct argues this is a civil matter, it too

seems to accept this.

I have gone on to consider what purposes B had in mind for the payments it obtained from Mrs J and whether these purposes were in line with the purposes Mrs J had believed, or instead, if they were in fact fraudulent. This is a complex matter, with multiple companies involved and numerous allegations about those parties and their involvement. Our investigator laid out comprehensively and clearly why they thought this amounted to a private civil dispute rather than a scam, and I do not intend to repeat this all here. I am in agreement with their findings and reasoning in their view of the complaint. And in summary, to reach an answer on what purposes B and its linked companies had in mind, the key information I've considered is as follows:

- B and linked companies owned sites and either had, or sought, planning permission to build and develop holiday homes on these sites. This suggests that there was a genuine intention of B and those other companies to build and/or develop the sites.
- The evidence available doesn't demonstrate that investors' funds were obtained fraudulently or solely for the personal benefit of the directors. I've been provided with no evidence to show that the funds weren't, in the main, used for business purposes.
- Many submissions have been provided, and allegations made, regarding representations made to investors prior to their investments. Whilst some misrepresentations may have been made by agents or brokers selling this investment scheme, I don't think this speaks overall to the intention of B and the other companies involved (including whether they sought to defraud their investors). Furthermore, misrepresentations made prior to an investment wouldn't automatically mean that Mrs J's payments would meet the definition of an APP scam, only in so far as these misrepresentations directly related to the purposes of the payments Mrs J made.

It's clear that there are large and complex ongoing investigations by both the administrators of the companies involved as well as the police. Given the breadth of these investigations, it's difficult for me to be certain that all the available evidence has been obtained from all parties and that all the information relevant to this complaint has been reviewed prior to the issuance of my decision.

Furthermore, these investigations haven't yet drawn definitive conclusions as to whether the companies, or their directors, have acted fraudulently. But, for completeness, I should state that fraudulent activity by the companies or their directors may not automatically mean that Mrs J's payments would then meet the definition of an APP scam, given any given activity found to be fraudulent may be unrelated to the purposes for which investors' funds were obtained and instead relate to other activities carried out by the companies.

B was linked to numerous other organisations, which suffered their own issues. For example, a linked firm which had been regulated by the FCA, had its authorisation removed. The evidence suggests this was due to it being unable to pay the fees levied by the FCA, rather than for any fraud or misconduct. It actually appears that they had borrowed money to finance one of the developments, prior to this investment scheme, which ultimately resulted in serious financial difficulties for that company. Serious financial difficulties do not mean that any fraud or deceptive practices took place then, or when the new scheme was set up.

An administrator from another linked firm has sent our service his current thoughts on the linked firm, and has said that it could show the hallmarks of possible fraud. But, by their own admission, they have not been able to see evidence from B and other linked firms to get a full picture, and without access to enough information they have not been able to establish

the true picture of the complexities of this investment scheme. Given the complexities involved there is much that is currently unclear or is simply unknown. In summary, I am in no better position to say this was most likely a deliberate fraudulent scheme than the administrator is.

I understand that there are allegations of investors being allocated the same plot numbers for the lodges. It is possible that the allocation of the same lodge plot number to more than one investor reflects fraud. But I can't discount that it might simply have been poor administration, or a sub-divided share in a single unit, or that this had happened for another legitimate reason. To find that B was operating a criminal scam, I'd need to find that there is convincing evidence to show that fraud and criminality is the most likely explanation not one of a range of possibilities. I have every sympathy for Mrs J as she has lost a substantial amount of money, and has provided a lot of detailed information and evidence relating to her complaint. But, many businesses and investments fail and enter administration for genuine reasons, and not because they were set up to defraud and scam people. Based on what I have seen, I can't say that an APP scam is a more likely explanation. It seems possible that the collapse of the investment was due to what appears to have been a serious breakdown in the joint venture to develop the sites (including the one Mrs J invested in). At the moment, that seems as likely to me as the alternative of this having never been a legitimate scheme.

Ultimately, Mrs J made payments towards a holiday lodge scheme that was purporting to develop the site and rent a lodge. The evidence I've seen doesn't sufficiently demonstrate that B didn't have the intention of carrying out and completing the developments and rentals at the time of the payments. Because of this, I'm not satisfied that Mrs J's claim meets the CRM Code's definition of an APP scam.

*Should First Direct have done more at the time of the payments in order to prevent loss to Mrs J?*

First Direct intervened and discussed the payments with Mrs J prior to releasing them. I do not think that there was anything in the calls to alert them that Mrs J was at risk of financial harm. And, even if it had discussed the payments with Mrs J further prior to their release, or asked even more questions, I'm not persuaded that the information she would have presented would've suggested that she might be at risk of financial harm either. This is based on the information available about B at the time of the payments. So, I can't fairly say First Direct could have prevented Mrs J's loss at the time.

Overall, I'm not persuaded that Mrs J has fallen victim to an APP scam, based on the evidence available. I've no doubt that this will be extremely disappointing to Mrs J, given the impact this situation has had on her, but I'm unable to say that First Direct are liable to reimburse her losses. Should any material new evidence come to light at a later date, for example from the police or the administrators, Mrs J can ask First Direct to reconsider her claim. But, as it stands, I can't fairly say First Direct should reimburse Mrs J's loss under the CRM Code.

### **My final decision**

My final decision is that I do not uphold this complaint against HSBC UK Bank Plc trading as first direct, and require it to do nothing further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 20 February 2026.

Katherine Jones

**Ombudsman**