

## **The complaint**

Mr K complains HSBC UK Bank Plc trading as first direct won't refund the money he says he lost to a scam.

## **What happened**

Mr K came across a property investment opportunity with a company, "C", that was being promoted by a property investment business he had been following online for some time. C claimed to offer investments in specific units which they said they would be refurbishing and renting out as social housing through councils and housing authorities they held contracts with.

In May 2024, Mr K sent C £65,000 to invest in five units. He was expecting a return of £9,000 every three months for the next three years. He received the first payment as expected in September 2024 but was then told the next payment would be delayed. He then looked into C further and concluded he had been scammed.

Mr K complained to first direct (via a professional representative) that it should refund him under the terms of the Contingent Reimbursement Model (CRM) code. First direct said it wouldn't refund him as it was awaiting the outcome of law enforcement action to determine if any reimbursement might be due.

Unhappy with this response, Mr K referred the matter to our service. Our investigator upheld his complaint. They were persuaded there was enough evidence to demonstrate Mr K's payments to C met the CRM code's definition of an Authorised Push Payment (APP) scam without waiting on the outcome of the police investigation. And they were persuaded he was eligible for a full refund of his outstanding loss under the code. They recommended first direct should refund Mr K's loss – and pay interest to compensate him for its delay refunding him.

Mr K accepted the investigator's findings but first direct appealed. In summary, it says the complexity of this matter means our service shouldn't consider this complaint. It also says it's reasonable to hold off on answering Mr K's CRM code claim pending the outcome of the police investigation. It also says no interest should be applied to our award, or a lower rate should be applied, as there's no evidence that, if Mr K hadn't sent the payments to C, the funds wouldn't have been kept in a low- or non-interest-bearing account.

## **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 the following reasons.

Mr K authorised the payments he is now disputing. The starting position in law is that he is liable for them. But first direct was signatory to the CRM code at the time of these payments – under which firms are generally expected to refund victims of APP scams.

Firms must normally respond to a claim under the CRM code within 15 days. But first direct argues it's within its rights to decline to refund Mr K at present in line with 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 C. And first direct says it would be unreasonable to make a decision without waiting for it to conclude. However, the specific details of the police investigation haven't been shared with our service. It's not clear whether any proceedings will concern charges that will have a significant bearing on the issues relevant to this complaint.

As first direct is 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 we don't know how long the investigation will take; it could be months or years.

In a similar vein, first direct argues our service shouldn't consider this matter due to the complexity involved (at present) in determining whether C were a scam. But I'd point out that our service must consider complaints quickly and with minimum formality. I don't think it would be appropriate to delay giving an answer on this complaint, 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 K was scammed. As R3(1)(c) explains, firms can only hold off on giving an answer under the CRM code if the outcome of an ongoing statutory investigation might reasonably inform its decision. In looking at the information we already know about C, and Mr K's dealings with them, I'm not persuaded the outcome of the police investigation is likely to have a bearing on this decision.

Overall, I'm persuaded it's appropriate for us to look into this complaint – and I'm satisfied there is already enough to show the payments in question meet the CRM code's definition of an APP scam - and that first direct should have refunded Mr K when he first raised this claim. I'll explain why.

Here is the CRM code's definition of an APP scam:

*“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 consider it clear Mr K intended to pay C for what he believed was a legitimate purpose (for a property development investment). So, I've gone on to consider whether C's intended purpose was broadly aligned with Mr K at the time the payments were made – and, if not, whether this was the result of a dishonest deception by C. For the following reasons, I'm persuaded C fraudulently deceived Mr K into making these payments.

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 K's payments for genuine property development investments.

Turning back to 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 is 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. For these reasons, I'm satisfied Mr K's payments to C meet 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 code is that firms should refund victims of APP scams – as I've determined Mr K was. However, there are some exceptions under the rules which, if applicable, firms can rely on to decline reimbursement.

Of relevance here is that firms can choose not to reimburse a customer if they ignored an effective warning. Or if they made the payment(s) 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. There are further exceptions within the CRM code but they aren't relevant here.

Mr K spoke to first direct over the phone to set up the payments (after the initial £10 sent) – and it did issue some scam warnings. But in order to seek to apply this exception, it would first need to show its warnings met the CRM code's criteria for an effective warning – including being impactful (i.e. positively affecting the likelihood of the scam succeeding).

First direct warned Mr K about email interception scams when he explained he had received the payment details via email. But that wasn't relevant to the scam he fell victim to. While it did go on to warn him about the risks of investment scams, particularly around the risk of such scams being promoted on social media, I'm not persuaded this warning was impactful in the circumstances. As Mr K explained, he had completed research into C – and there wasn't public information available at the time which I think would reasonably have given him cause to suspect they weren't legitimate.

First direct explained he could check if C were registered with the FCA. But this type of investment wouldn't necessarily have required them to be. And there wasn't much detail given about what else Mr K could do, or what the red flags might be, that I consider likely to have affected the chance of the scam succeeding.

I'm also persuaded Mr K had a reasonable basis for belief when he made these payments. C were registered on Companies House and provided professional-looking documentation and marketing. I can see why Mr K was persuaded, based on his research into C and how they were being promoted at the time, that they were legitimate. As mentioned above, there weren't obvious public concerns about them at the time.

I have considered whether the returns Mr K was expecting were 'too good to be true'. But he was given an explanation for how these had been guaranteed; as he mentioned to first direct when making the payments, he was told the scheme was government backed – providing an assurance on rents. In the overall context of this sophisticated scam, and bearing in mind the investment was allegedly based around social housing provision, I don't think it's unreasonable he believed this and thought C were offering a legitimate investment.

As first direct hasn't demonstrated that any exceptions to reimbursement apply under the CRM code, I think it should refund Mr K's outstanding loss in full.

The investigator thought first direct should pay 8% simple interest per year on top of the refund amount, running from 15 days after it received Mr K's claim to the date of settlement. That is the point at which they concluded first direct should have refunded him under the terms of the CRM code. Given the information available about C at the time of Mr K's claim, I'm persuaded first direct had enough to consider and refund his claim within this timeframe.

First direct argues that the 8% simple interest rate is too high, and that a lower rate, or no interest at all, should be applied. It says there is no evidence the funds wouldn't have stayed in a non-interest-bearing account if Mr K hadn't made the disputed payments. But at no point has our service argued first direct should have prevented the scam from occurring. Rather, the interest award is to compensate Mr K for being deprived of the use of these funds from the point at which first direct should have reimbursed him under the CRM code.

First direct should be well aware of our service's approach to awarding interest in situations like this. The interest rate we apply is the same rate normally awarded by the courts. It takes into account a range of factors, such as that tax is normally deductible from the award. It is compensation for Mr K being deprived of the opportunity to use these funds, and the potential benefit he may have lost out on – ranging from lost enjoyment from what he could have purchased, to lost profits from other investments or interest, or costs incurred from borrowing – due to the refund not being paid when it should have been.

In the circumstances, I'm not persuaded first direct has demonstrated that our normal interest award would be unfair.

### **Putting things right**

To put things right, HSBC UK Bank Plc trading as first direct must refund Mr K the disputed payments he sent C as part of the scam, minus the credit he received back from them (and any other sums already recovered or returned to him from this scam).

HSBC UK Bank Plc trading as first direct should pay 8% simple interest per year on this amount, running from 15 days after he raised his scam claim to the date of settlement. This is to compensate him for the loss of use of these funds from the point at which it should have refunded him.

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

In order to avoid the risk of double recovery, HSBC UK Bank Plc trading as first direct is entitled to take (if it wishes) an assignment of the rights to all future distributions in relation to scam payments we're upholding that arise, such as from the police investigation and criminal proceedings, before paying the award.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint and direct HSBC UK Bank Plc trading as first direct to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 November 2025.

Rachel Loughlin  
**Ombudsman**