

## **The complaint**

Ms D complains about HSBC UK Bank trading as First Direct.

She says that she has been the victim of a scam, and would like First Direct to refund her the money she has lost.

## **What happened**

Ms D was introduced to an investment opportunity I will refer to as 'B' by her son. Ms D's son and an associate who worked in investments undertook checks into B and were satisfied that it was a legitimate business.

B offered investment in the development of holiday lodges which would eventually be rented out to generate revenue. Ms D would receive a quarterly payout of 8% on the amount invested with B buying back the lodge after a fixed term of 5 years.

In October 2021, Ms D made a payment of £23,950, and between January 2022 and January 2024 received returns of £5,621.20, however after this point, no further funds returns were paid, and B went into administration in May 2024.

Ms D now considers that she has been the victim of a scam and made a complaint to First Direct about what happened with the help of a professional third-party. First Direct looked into her concerns but didn't think that her complaint should be upheld. It said that this was a civil dispute between Ms D and B.

Ms D and her third-party then referred her complaint to our service and our Investigator looked into it. They explained that based on what is known about B and the other companies involved in the development project, there was not currently enough to conclude this was a scam as set out in the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. So, they felt it was reasonable for First Direct to treat this as a civil dispute.

Ms D's representative disagreed with the findings and raised a number of points in response. Her representative also provided a significant amount of additional evidence which sought to demonstrate that B, its linked companies and the directors had acted fraudulently and that Ms D had been the victim of a scam.

As an informal agreement could not be reached, the complaint has been passed to me for a final decision.

## **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.

Ms D's representative has 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 Ms D's 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.

It isn't in dispute that Ms D authorised the payment in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transaction. But she says that she has been the victim of an authorised push payment (APP) scam.

First Direct has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

*...a transfer of funds executed across Faster Payments...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 explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

*"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."*

I've therefore considered whether the payment Ms D made to B falls under the scope of an APP scam as set out above, and whether First Direct was wrong in reaching the conclusion that this was a private civil dispute. Having done so, I don't think the evidence shows First Direct was wrong to reach that outcome. I'll explain why in more detail.

In order to determine if Ms D has been the victim of a scam, I have to consider if her intended purpose for the payments was legitimate, whether the intended purposes she and the company she paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company, in this case B.

#### *Ms D's understanding*

Looking over the agreement Ms D has provided, as well as her testimony, I think her understanding was that she was investing in a holiday lodge rental investment scheme which would begin with the development of the holiday site. I think this was a legitimate purpose.

#### *Were B's purposes fraudulent?*

I've gone on to consider what purposes B had in mind for the payments it obtained from Ms D and whether these purposes were in line with the purposes Ms D had believed, or instead, if they were in fact fraudulent.

In reaching 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 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 Ms D'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 Ms D 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 Ms D'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.

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 Ms D 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.

Ultimately, Ms D 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 Ms D's claim meets the CRM Code's definition of an APP scam.

Lastly, I've considered whether First Direct could've done any more at the time of the payments in order to prevent Ms D's loss.

I've not seen evidence to suggest that First Direct intervened and discussed the payments with Ms D prior to releasing them. But, even if First Direct had discussed the payments with Ms D prior to their release, I'm not persuaded that the information she'd have presented would've suggested that she might be at risk of financial harm. This is based on the

information available about B at the time of the payments. So, I can't fairly say First Direct could've prevented Ms D's loss at the time.

Overall, I'm not persuaded that Ms D has fallen victim to an APP scam, based on the evidence available. I've no doubt that this will be extremely disappointing to Ms D, 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, Ms D can ask First Direct to reconsider her claim. But, as it stands, I can't fairly say First Direct should reimburse Ms D's loss under the CRM Code.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 4 March 2026.

Claire Pugh  
**Ombudsman**