

The complaint

Mrs D complains that HSBC UK Bank Plc, trading as first direct ("first direct"), didn't do enough to protect her from what she says was a scam involving the purchase of a car. Mrs D would like to be reimbursed for the losses she considers she's incurred.

What happened

On 21 January 2023 Mrs D sent a payment of £900 from her first direct account for the purchase of a second-hand car, which she collected in person after carrying out a short test drive.

Mrs D, upon returning home with the car, phoned the seller to enquire about the MOT renewal date. Mrs D says she was told that the MOT was due around March 2023. Mrs D, wanted to get a more specific date and went onto the DVLA website. Mrs D discovered the MOT was due on 26 January 2023. Mrs D carried out the MOT and it failed. Mrs D paid for some repairs and had a further MOT carried out and while the MOT passed – it passed with 'defects' and 'advisories' which Mrs D would need to take care of also.

Mrs D is of the opinion that she had been scammed by the seller and reported the matter to first direct to help her get her money back.

Ultimately first direct concluded that this was a civil dispute rather than a scam and said it couldn't assist.

Mrs D referred her complaint to our service and one of our Investigators didn't recommend it should be upheld. In summary our Investigator thought first direct had acted fairly in reaching the decision it had. Mrs D disagrees and has asked for an Ombudsman to make a 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'm sorry to hear of what's happened to Mrs D. I can see she feels strongly about what has happened. But having considered everything, I can see no basis on which I can fairly require first direct to refund the money Mrs D sent. I can appreciate that this outcome is not the one Mrs D was hoping for and I can understand why she wants to try and recover this money. But having thought about first direct's actions, I am unable to say it has responsibility for refunding the money Mrs D sent. I will explain why.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that their customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. When first direct made the payment, it was complying with Mrs D's instructions. At the time, Mrs D wanted to pay the seller and there was no mistake made as the money was sent to the correct account details. As I don't think first direct acted incorrectly by making the payment, I've gone on to consider whether it should have refunded Mrs D for any other reason.

When considering what is fair and reasonable in this case, I've also thought about the Lending Standards Board's voluntary Contingent Reimbursement Model (CRM) Code, which first direct has signed up to and was in force at the time Mrs D made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an 'authorised push payment' ("APP") scam. I've thought about if the CRM Code applies in the circumstances of the payment Mrs D made and, in particular, whether first direct ought to reimburse her under the provisions of the CRM Code.

But the CRM Code is 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"

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Both first direct and our Investigator felt the payment Mrs D made formed part of a buyer/seller dispute and, as such, is not covered by the CRM Code.

Mrs D strongly disagrees. She feels the seller has scammed her. From what I have seen, although I accept Mrs D may not have received a car that was in as good a condition as she expected, or it may have been misrepresented to her by the seller, I don't think I can fairly say that the situation Mrs D finds herself in is a scam. I think first direct's conclusion that the payment Mrs D made forms part of a civil dispute and, as such, is not covered by the CRM Code was fair.

This means I don't think first direct is responsible for reimbursing Mrs D because of any obligation under the CRM Code. I can appreciate why Mrs D feels she has been deceived. But I am mindful that Mrs D did receive the car for the money she paid. There is no dispute that the car exists, as Mrs D has taken ownership of it, and I've not seen anything that makes me think the person selling it did not have the right to do so.

The problems Mrs D has raised stem back to the condition of the vehicle – she said the car was not as described, not fit for purpose and was dangerous – requiring her to carry out additional repairs after it failed its MOT. However the car Mrs D purchased did have a valid MOT – albeit it expired sooner than what the seller advised. I appreciate Mrs D had to pay for repairs in order for it to subsequently pass its MOT, but the concerns and issues Mrs D raises about the condition of the car are clearly stated as not being catered for within the CRM Code.

Mrs D has my sympathy, in that she hasn't received a car that was in the condition she had hoped for. But overall, I don't think first direct has treated Mrs D unfairly when they concluded this was a civil matter. For the reasons I have explained, I'm satisfied Mrs D isn't due a refund under the CRM Code. Nor can I see there are other grounds on which I could say that first direct should fairly and reasonably bear the responsibility for either refunding Mrs D the purchase price or paying for or contributing towards any of the further costs she's since incurred.

I realise that my decision will be disappointing for Mrs D. But overall, for the reasons I've explained I consider first direct were fair in considering the matter a civil dispute which isn't covered by the CRM Code and is therefore something that needs to be resolved between the two parties through alternative methods.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 27 December 2023.

Matthew Horner
Ombudsman