

## **The complaint**

Mr D is seeking to recover £50,000 from HSBC UK Bank Plc (trading as “First Direct”) after he was the victim of a scam.

## **What happened**

In 2018, Mr D and his wife were looking for an investment opportunity which would ultimately provide them with an income. Mr D’s wife found an advert for a company online and contacted them to get some further information. Unbeknown to Mr and Mrs D, they were actually speaking with fraudsters acting as a “clone” of a legitimate regulated company and who were using all of the genuine company’s documentation and literature.

Mr D was offered a 6.7% guaranteed return on the investment opportunity presented to him. And after what appeared to be a genuine application and verification process, Mr D was sent an email with the account details he would need to make payment to.

Mr D initially attempted to make an online transfer. But this was blocked as it exceeded Mr D’s daily online transfer limit. This prompted Mr D to call First Direct instead. First Direct have provided our service with a recording of this conversation which I have listened to in full.

In summary, there is some discussion around the transfer being made and Mr D informs First Direct’s call-handler of some of the checks he has completed to satisfy himself that the company he is dealing with is legitimate – this includes that his investment will be protected by the Financial Service’s Compensation Scheme – which he is quite adamant about. First Direct’s call-handler then takes down the account details provided to Mr D and warns him of the risk of ‘email intercept’ scams. Mr D confirms he is happy and that he wishes to continue.

The agent then tells Mr D that she is going to check the sort-code provider “just to make sure who they are”. She then tells Mr D that his money is being transferred to a company that I will refer to as “Company T”. This company is a money remittance service. This appears to only be mentioned briefly in passing and the conversation moves on.

Once the transfer has been made, Mr D tells the call-handler the rate of return he is expecting. The agent comments that this is high and enquires if it is risk based. Mr D confirms it isn’t and tells the agent the rate is guaranteed before the call comes to an end a few minutes later.

Some months later, Mr D realises he has been the victim of a scam and he contacts First Direct to tell them what has happened. First Direct tell Mr D there is nothing further they can do to help him.

Unhappy with First Directs response, Mr D brings his complaint to our service.

One of our Investigators looks into Mr D's complaint and recommends that it should be upheld in full. He says that the payment going to a money remittance service should've been a 'red-flag' for First Direct which should've raised concerns and these concerns should've been passed on to Mr D. He also pointed out that at the time the transfer was made, the Financial Conduct Authority ("FCA") had issued a warning about the genuine company Mr D thought he was dealing with having been cloned by scammers. Our investigator thought that had First Direct's call-handler taken the time to educate Mr D about the possibility of cloned investment firms and what they looked like, as well as the necessity of checking the FCA website for warnings about such scams, he would've done so and the loss would've been prevented.

First Direct didn't agree. It said that investment scams weren't as well known in 2018 as they are now and it's not fair for the investigator to apply today's knowledge to a scam that happened in 2018. It also said, that whilst the payment being made to Company T now may be a red-flag, little was known about Company T at the time.

Finally, it said it has also listened to the recording of the call that had taken place between Mr D and its call-handler and it was clear that Mr D had taken pride in the amount of due diligence he had completed to satisfy himself that the company he was dealing with was legitimate. First Direct felt that he was unlikely to have listened to its agents concerns, had any been raised, in the full belief that he had already completed all of the necessary checks needed. First Direct pointed out that it wouldn't have been appropriate for its call-handler to have interrogated Mr D about the investment at the time.

Our investigator didn't change his mind. And, as an agreement could not be reached, the case 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.

Having done so, I have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint for the following reasons:

It is not in dispute that Mr D authorised the scam payment himself. I accept that this payment was 'authorised' even though Mr D was the victim of a sophisticated scam. So, under the Payment Services Regulations, and the terms and conditions of his account, Mr D is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider First Direct should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in

recent years, which banks are generally more familiar with than the average customer.

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In summary, I consider that as a matter of good practice, First Direct should have been on the lookout for unusual and out of character transactions.

Having listened to the call, it's clear that First Direct's call-handler does identify that the payment is being made to Company T. Company T is a money transfer service generally used to transfer money abroad. It is not a business banking account, the type of which you would expect a genuine investment payment to be made to. And I agree with our investigator that this should have raised concerns.

I've taken on board what First Direct has said about little being known about Company T at the time this payment was made. I agree to some extent that it's call-handler may have known little about the services Company T offered. But I don't think they necessarily needed to, in order to know that something might not be quite right here. It is unlikely that a genuine investment company would've requested payment to an account such as this. And this should've been pointed out to Mr D at the time. He hadn't realised he was making payment to any other company than the one he thought was investing in.

I also don't agree with First Direct that the key characteristics of this type of scam wouldn't have been known at the time either. I'm satisfied that this type of scam – an investment scam – would've been well-known to banks at the time. And so, I'm persuaded that First Direct should've been concerned about the possibility of fraud here and that it should've asked some further questions about the payment and warned Mr D of potential fraud and scams before allowing him to proceed.

In other words, I'm satisfied that there was a fairly obvious red-flag here that should've put First Direct on notice that something might not be quite right. But the evidence before us indicates that the call-handler did not ask Mr D any additional questions about the payment before proceeding. In my judgment, First Direct could and should have done more here, particularly given that good industry practice from the time encourages staff to ask questions about potentially fraudulent payments in order to test the purpose and legitimacy of the payment.

This is a particularly well-known scam. And so, I'm persuaded that had bank staff asked some probing questions e.g. what the investment was for and its expected returns, and what checks Mr D had completed, some further concerns would've come to light and I'm not persuaded Mr D would've agreed to continue with the payment. Specifically, having told Mr D that his payment was going to an odd account, I'm persuaded that it would have been reasonable for First Direct to have asked Mr D if he had checked the FCA website for the possibility that the company he thought he was dealing with had been "cloned".

First Direct could've then educated Mr D about this particular type of scam and its key characteristics. Mr D would've had no reason not to trust what the call-handler said. And I'm satisfied that had Mr D been told that the payment he was making had some of the hallmarks of a well-known scam, he would've followed First Direct's advice and checked the FCA website. It's then reasonable to assume that he would've then seen the FCA warning about this particular company and the scam would've been prevented.

I don't agree with First Direct that Mr D's conduct during the call indicates that he wouldn't have listened to any advice presented to him by the call-handler. He repeats on more than one occasion during the telephone conversation that his main priority is that the funds are protected. He discusses how he has taken some time to ensure that the investment has FSCS protection. At one point during the call, when Mr D thinks that the call-handler says the account details provided to him might be fraudulent, you can hear his concern. And so, whilst I agree with First Direct that it is clear that Mr D takes some pride in the checks he has completed thus far, I don't think this means that; when presented with genuine concerns about the transfer he was making, he would've proceeded regardless. Mr D presented himself throughout the call as entirely risk averse.

In other words, if the call-handler had carried out further or better questioning in line with a bank's duty of care, and educated Mr D about this type of scam and its key characteristics, it seems probable that Mr D would have become credulous about the scam in time and decided not to make the payment at all. The fraud would have failed; and Mr D would not have lost £50,000.

I have also considered whether Mr D should bear some responsibility in terms of his actions. However, it is clear that up to and including the time of authorising the payment, he was still totally in the dark and simply did not appreciate what he was doing or the consequences of his actions. He thought he was sensibly investing his savings with a legitimate investment company. I am satisfied that Mr D was the unwitting and blameless victim of a clever fraudster. The bank was the professional in financial matters; Mr D was a layperson.

In the circumstances I am satisfied First Direct missed an opportunity to identify that Mr D was at risk of financial harm from fraud which could've ultimately prevented the scam. I'm persuaded it should fairly and reasonably reimburse Mr D for the loss he suffered without any reduction together with interest to compensate him for being deprived of the money he lost.

### **My final decision**

For the above reasons, I have decided it is fair and reasonable to uphold this complaint about HSBC UK Bank Plc (trading as First Direct) — and I therefore require the bank to:

- Pay Mr D £50,000 within 28 days of receiving notification of his acceptance of my final decision;
- Pay interest on that sum at the rate of 8% simple from the date of the loss to the date of refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 April 2022.

Emly Hanley  
**Ombudsman**