

The complaint

Mr I complains that HSBC UK Bank Plc (trading as First Direct) won't reimburse the full amount he lost to an investment scammer.

What happened

Mr I received an email from his friend introducing him to an investment company called Grandefex.

After speaking with representatives of Grandefex, Mr I decided to invest with them. From May 2020 to August 2020, Mr I made payments of approximately £180,000 towards his investment with Grandefex. Mr I made these payments from his First Direct current account by way of Faster Payments, International payments and Visa debit card payments. Mr I received a credit from his investment of approximately £2,600 in August 2020.

Mr I contacted First Direct in September 2020 to report that he believed he was the victim of an investment scam. Mr I has since found out that his friend's email account was hacked and the recommendation didn't come from them. HSBC attempted to recall the International payments but was unable to. It didn't think Mr I had any chargeback dispute rights in respect of his Visa debit card payment. But it offered to refund 50% of Mr I's Faster Payments totalling £37,194.15 (after taking into consideration the credit he received from the supposed investment) in accordance with the Contingent Reimbursement Model (CRM).

Unhappy with First Direct's response, Mr I referred his complaint to this office. During the course of our investigation, First Direct agreed to increase its offer to the full amount of Mr I's Faster Payments totalling £77,000 in accordance with the CRM. Our Investigator felt this was a fair offer on the basis of intervention calls he'd listened to between First Direct and Mr I.

Mr I didn't agree. In summary he felt:

- First Direct could have carried out more extensive checks as reviews on Google/Trustpilot gave clear red flag warnings. The documentation he shared with First Direct clarifies this was a high risk investment as he could lose 32% on each trade.
- He checked Trustpilot in November 2020 and it had an average rating with nearly as many excellent reviews. Later, a warning was added to Trustpilot but this was after his initial investment and was very easy to miss.
- He didn't know the email introducing him to Grandefex was not sent by his friend as she was hacked, so it was reasonable to assume it was a genuine recommendation.
- Grandefex used high pressure sales tactics to persuade him to invest more.
- First Direct didn't take any meaningful steps to question the large transfers which were out of the ordinary for him and gave very little post scam advice.

Mr I further added that First Direct ought to have pursued a chargeback claim. He also said that First Direct didn't explain some of the transfers were being made abroad and was

unaware he couldn't claim compensation on all the payments under the CRM. There have been cases in the press where HSBC settled similar claims in full.

The case has therefore been passed to me for determination.

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.

As First Direct has agreed to refund Mr I's Faster Payments in full in accordance with the CRM, I won't consider these payments in this decision. As Mr I is aware, CRM doesn't apply to his International or debit card payments, so I'll only consider these payments and whether First Direct ought to have done more to prevent them in this decision.

I am satisfied that Mr I authorised the payments in question here. This means that although Mr I subsequently lost the majority of this money, under the Payment Services Regulations and the terms and conditions of the account, Mr I is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory 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 its customers were at risk of fraud (amongst 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; and
- 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.

I'm satisfied there were fraud triggers immediately because First Direct's fraud team flagged Mr I's first attempted international payment of approximately £36,000 to Bitstamp on 12 May 2020. I've listened to the call between Mr I and the fraud team. Mr I confirmed the payment was genuine. When asked what the payment was for, he said it's 'about Bitcoin' with a friend of his he'd been dealing with. Mr I confirmed again that he was investing in Bitcoin. The fraud team asked if Mr I had made other payments or whether it was the first transfer, Mr I said he'd made other payments to it. Mr I said it was somebody who he's known for some time.

I don't think Mr I was entirely transparent with First Direct's fraud team. Whilst a friend had introduced Mr I to Grandefex, he was intending to buy Bitcoin to fund his account with Grandefex, not his friend. I don't think Mr I gave First Direct the opportunity to provide him with a meaningful warning because he was clear that he was investing with a friend he'd known for some time. I don't think his answers to First Direct's questions would have caused it concern that he was at risk of fraud or a scam.

First Direct's fraud team flagged another of Mr I's payments in dispute on 28 July 2020. This payment was to Coinbase. I listened to this call. Mr I was asked if he'd used Coinbase before, he said no. The fraud team asked Mr I whether he'd done his own research or

whether he'd been contacted by anybody, Mr I said he'd done his own research. The caller asked Mr I where he'd obtained the details, he said he'd found them on the internet himself. The caller advised Mr I that if someone had told him to make the payments, if it's fraud or a scam First Direct wouldn't be able to recover the payments. He said he wasn't concerned about this and was still happy to proceed.

I don't think First Direct ought reasonably to have known at the point of this call that Mr I was at risk of financial harm, so I don't think it could have done anymore to warn him.

I've taken into consideration that Mr I was a pensioner at the time he was scammed and that he wasn't familiar with high risk investments. But overall, I don't think Mr I was willing to go into any further detail about his dealings with Grandefex during his calls with First Direct. Because of this, I don't think First Direct missed an opportunity to provide him with a meaningful warning that could have uncovered the scam. I take Mr I's point that there was adverse information about Grandefex at the point he made his payments to them in the form of a warning from the Financial Conduct Authority (FCA). And I would have reasonably expected First Direct to have been aware of this. But Mr I did not make his payments directly to Grandefex and instead made payments to legitimate cryptocurrency exchanges. He also advised First Direct that he'd carried out his own research. The purpose of First Direct's fraud team calls were to ascertain whether Mr I was at risk of fraud or a scam. I don't think First Direct could have reasonably known Mr I was dealing with Grandefex because he didn't disclose this information and actively advised he was paying a friend who he'd known for a long time.

So, I agree with our Investigator that I don't think First Direct could have prevented the scam from taking place, despite efforts to. And I think Mr I was determined to make the payments he made.

Recovery

First Direct made attempts to recover Mr I's International Payments but was unable to. I can't reasonably have expected it to have done anymore than this and unfortunately either the recipient banks didn't respond or advised they couldn't return the funds as they were exchanged for crypto and not available to return.

Chargeback

The chargeback process is voluntary and run by the card scheme whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed or be deemed a 'valid claim'.

Our role in such cases is not to second-guess the card scheme rules, but to determine whether the regulated card issuer (i.e. First Direct) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of Mr I.

Visa does permit dispute claims relating to investment trading. As our Investigator explained, this requires specific evidence that Mr I didn't appear to have. But here, Mr I didn't pay Grandefex directly and instead made his debit card payment to a legitimate crypto exchange – Bitstamp any attempted chargeback claim would have processed against Bitstamp, not Grandefex.

There doesn't appear to be a dispute that when Mr I paid Bitstamp, they did what they were asked to do, i.e. convert his £sterling into crypto and send it onto the wallet of his choice (his account with Grandefex). So even if First Direct had attempted to process a chargeback

claim for his debit card payment, Bitstamp would most likely have defended the claim on this basis.

I don't think First Direct acted unfairly by choosing not to process chargeback claims for Mr I because I don't think it had a reasonable prospect of success in doing so.

I realise this will come as a great disappointment to Mr I not least because he's lost a substantial sum of money here. But for the reasons I've explained, I don't think First Direct could have prevented Mr I from making the International or debit card payments, nor do I think it could have done anymore to recover them. I also don't think First Direct acted unreasonably by choosing not to process a chargeback claim on Mr I's behalf.

My final decision

For the reasons I've explained, I think HSBC UK Bank Plc (trading as First Direct) made a fair and reasonable offer to return £77,000 to Mr I. It has already paid him £37,194.15, so it should:

- Pay Mr I the remaining amount of £39,805.85.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 26 August 2022.

Dolores Njemanze
Ombudsman