

The complaint

Mr and Mrs H are unhappy that HSBC UK Bank Plc (trading as “First Direct”) hasn’t fully reimbursed them after they fell victim to a scam

What happened

I issued a provisional decision in March 2022 to explain why I thought Mr and Mrs H’s complaint should be partially upheld. And I said I’d consider anything else anyone wanted to give me. This is an extract from that provisional decision:

“In May 2019, Mrs H received a call from someone claiming to be from the Financial Conduct Authority (“FCA”). The caller told her they had information which showed someone in an investment management company that her and Mr H held significant investments with was carrying out fraudulent activity. As a result, their investments were at risk and in order to protect them, Mr and Mrs H would need to liquidise the investments and move the funds into various external accounts to keep their money safe.

After this call, and up to August 2019, Mr and Mrs H cashed in all of their investments and proceeded to make a series of payments from four accounts all with different banks (including First Direct) to various external accounts – including accounts held with some international banks. It is only the transactions made from Mr and Mrs H’s First Direct account that now form the subject of this complaint.

Mr and Mrs H made 13 international payments totalling over £620,000 and a further 22 domestic payments totalling over £250,000 from their First Direct account to a series of new payees between 14 June 2019 and 22 August 2019. Their total loss amounts to just over £875,000.

Mr and Mrs H discovered that they’d been scammed on 2 September 2019 and reported the matter to First Direct. First Direct reviewed the claim and it was established that £190,000 worth of the domestic payments had been refunded to Mr and Mrs H by the recipient bank. A further small amount (under £100) was also recovered from the receiving accounts too. In terms of its own liability,

First Direct decided to refund £15,000 - which equated to 50% of one of the final domestic payments made by Mrs H. It explained it wouldn’t be refunding any further amounts for reasons I’ll set out later on. First Direct repeated this stance in its final response after Mr and Mrs H raised a complaint about the handling of their scam claim.

Unhappy with First Direct’s final response, Mr and Mrs H brought a complaint to our service – and one of our investigators considered it.

What Mr and Mrs H told our service:

- In May 2019, Mrs H received a call from someone claiming to be from the FCA – the number the call was received from appeared to be a genuine FCA number. She was*

told they were investigating a company that her and Mr H held investments with. She was told someone within the company was stealing their clients' money and therefore their money was at risk. In order to keep the money within the investments safe, Mrs H would have to cash in her investments and transfer the money to various accounts both in the UK and abroad. By doing this, their money would be safe as these accounts would be under the control of the FCA and the fraudster at the investment company wouldn't have access to them.

- Mrs H can't remember if the caller went through any verification procedures. But the phone number she received the call from did match the number for the genuine FCA. She knew this as she had initially challenged the caller and was told to look up the FCA number online and compare it to the number on the call. At the time, Mrs H didn't know it was possible for phone numbers to be impersonated or 'spoofed' – so after checking the number, she assumed the call was genuine.*
- After the call ended, Mrs H received some emails supposedly from who she thought was the FCA as well. She said the emails had 'FCA' in the email address which helped to assure her they were genuine emails. Our service has seen one of these emails. The correspondence is to and from an individual who I'll refer to as 'M'. The email address does refer to the FCA – after M's name – but it isn't referred to in the email address domain name as you would expect from a legitimate email address. Some other noticeable points of interest include the fact M's name is spelt differently in the email address compared to how they sign off the email. The spelling of some of the words in the body of the email also appear to be incorrect.*
- Following the fraudsters advice, Mrs H proceeded to cash in her investments. These initially credited an account they held with another bank. Mrs H then made a series of transactions out of that account as well as three other accounts all with different banks. She did this on the basis she was told the money needed to be moved to various 'safe accounts' in order to protect it. She was also told to use all her available accounts to get the money to safety as soon as possible - avoiding being restricted by the daily transfer limit that would apply if she used just one.*
- One of these other accounts was a brand-new account with a different bank which Mrs H was encouraged to open. Mrs H was told by the fraudsters that as this was a new account, which had no connection with any of her previous investments, the fraudster at the investment company wouldn't be aware of it and so money in this account would be safe.*
- Mrs H acknowledges that the recipient accounts weren't in her or Mr H's names.*
- Whilst the payments were ongoing, Mrs H was continually reassured that these accounts were secure and once the FCA investigation was over, she would get all the money back.*
- Mrs H accepts First Direct and some of her other banks asked her what some of the payments were for. However, she was instructed by the caller not to disclose anything about the investigation. This was because they couldn't be sure if anyone else would pass on information to the investment company which would ultimately compromise the investigation into it.*
- Mrs H was instructed to provide "cover-stories" if any of the banks questioned what the payments were for - examples of which were to explain that certain international payments were going towards either renovation work on a property they owned abroad or to an investment company in Asia. Mrs H was even given different documents – such as invoices and contracts by the fraudsters to help maintain the cover stories.*
- The scam happened over a period of three to four months. During this time, Mrs H was in regular contact with two people who claimed they worked for the FCA. Sometimes she would be called several times a day to be given updates on how the investigation was going. The fraudsters provided different scenarios to Mrs H, one of which was that a suspect in a foreign country was under surveillance. That suspect*

was subsequently arrested and Mrs H was told they'd found a laptop which meant there was another suspect too. Eventually, she was told they'd arrested the correct person and so she could make an appointment with her investment company to decide how to move forward. However, when she attended the appointment in September 2019 – she realised she has been scammed.

- Mr H was 82 and Mrs H was in her late 70s at the time the scam took place. They have described themselves as not very knowledgeable when it comes to technology. As a result, they were unaware that it was possible for scammers to make phone calls appear to be from a number that wasn't the one being used to make the call - otherwise known as 'spoofing'.

What First Direct has told our service:

- First Direct didn't think it was appropriate for our service to consider the complaint due to the amount lost by Mr and Mrs H – it significantly exceeds our award limit. It thought it more appropriate for the case to be dealt with in court. It pointed out that if our service did go on to consider the complaint, and should it be upheld, it wouldn't look to pay anything over our award limit.
- First Direct doesn't believe it should refund anything over and above the £15,000 already offered – for two reasons. Firstly, it believes Mrs H was provided with effective warnings prior to making the scam payments based on what she'd told First Direct the payments were for. First Direct believe Mrs H chose to disregard these warnings and make the payments regardless. For example, it says Mrs H was given warnings about email intercept scams when she said the reason for a new payee being set up on the account was to pay a builder for building works. First Direct now acknowledge this wasn't the true purpose of this payment (and others), but it feels it shouldn't be held liable for not providing a relevant warning if this was a result of Mrs H being dishonest with them about the real reason for the payment.
- The second, is that First Direct doesn't believe Mrs H had a reasonable basis for believing she was dealing with the genuine FCA. It also doesn't believe it was reasonable for her to believe that she needed to make the payments out of her account in order to keep their money safe. It's commented that Mrs H is a well-educated person and she failed to carry out any reasonable checks to make sure this wasn't a scam – especially considering the considerable amount of money she was transferring. It says Mrs H appears to have relied on the fact that the phone number used to call her matched the genuine FCA number. However, this was only because the scammer prompted her to check. Aside from this, Mrs H didn't do any further checks herself and First Direct has described the story she was told, that someone at an investment company could have access to her banks accounts because that's where her dividends were paid, as 'fanciful'.
- It highlighted a number of checks Mrs H could've done. I won't list all of them here, but they include having called the genuine FCA about the investigation and querying several things which Mrs H was told which seemed suspicious.
- It acknowledges that the disputed transactions were unusual for Mr and Mrs H's account. But it feels that even if further questions were asked, the scam still wouldn't have been uncovered or prevented. This is because it believes Mrs H wouldn't have told the truth about the real reason for the payments and even if First Direct had blocked the payments earlier, she would've continued to make them from another account.

Our investigator reviewed what Mrs H and First Direct had said, alongside any other evidence made available to her. Having done so, she was satisfied that our service should consider the complaint – despite First Direct's comments. This was because she was satisfied our service was able to reach a fair and reasonable outcome and what we could

ultimately award didn't undermine that.

Our investigator then considered what was fair and reasonable when it came to both the international and domestic payments. This included First Direct's obligations under the Contingent Reimbursement Model (CRM) Code.

First Direct is a signatory of the Code which requires it to reimburse customers who have been the victim of APP scams, like this, in all but a limited number of circumstances or 'exceptions' which are set out in the code itself. First Direct says one or more of these exceptions applies to most of the scam payments here which is why it's only refunded 50% of a single domestic payment.

Our investigator wasn't persuaded that any of the exceptions were applicable. She didn't agree that First Direct had provided Mrs H with effective warnings each time she made a payment. She accepted Mrs H may not have been truthful about the nature of the payments but she highlighted that quite a few of the payments made by Mrs H had flagged on First Direct's security systems. Because of this, she felt it was for First Direct to have asked reasonable questions about the payments to get a better understanding of what might be happening, and then tailor their warning accordingly. Our investigator was satisfied this didn't happen – and this meant First Direct didn't provide Mrs H with any effective warnings throughout the course of the scam.

Our investigator was also persuaded Mrs H did have a reasonable basis for believing she was dealing with the genuine FCA and that she needed to move her money to keep it safe. The spoofed phone number made it look like it was the genuine FCA calling and pressuring language was used to make it seem their money was in immediate danger. Our investigator acknowledged that whilst the recipient accounts weren't in Mr and Mrs H's names – Mrs H wasn't specifically told that this was going to be the case, so there was no need to question why the accounts weren't in their names, as Mr and Mrs H simply thought the accounts were under FCA control – regardless of whose name they were ultimately registered under.

Our investigator said that whilst the emails Mr and Mrs H received didn't have some of the features you'd expect of a genuine email, she thought there was still enough to make it seem that they were real – especially in conjunction with the conversations and other tactics the scammers were using.

She acknowledged that First Direct did call Mrs H after the very first payment. But because this payment (and the following ones) were so unusual, she also felt First Direct ought to have asked more probing questions in addition to just asking what the payment was for, in order to try and find out what was going on. Our investigator was persuaded that had this happened as it should've, Mrs H would've struggled to maintain any cover-story she may've had and so it would've become apparent that something else was happening and the payments could've been stopped.

As a result of all of the above, our investigator felt it would be fair and reasonable for First Direct to refund Mr and Mrs H any remaining losses. Due to the value of the refund, which amounted to significantly more than our legal award limit, our investigator explained she was only recommending £350,000 (plus interest) and that First Direct wouldn't have to pay anything over this amount.

She also considered whether it would be fair and reasonable to recommend First Direct pay anything further in relation to any consequential loss which may've been incurred by Mr and Mrs H as a result of liquidising their investments. However, she didn't think it was fair for First Direct to bear these losses – as she was persuaded it was most likely Mrs H would've continued to make payments to the scammers through other means, even if First Direct had

stopped her from making payments from their account, so she would've incurred these losses regardless.

Mr and Mrs H agreed with our investigator's outcome – but First Direct disagreed. I've summarised the reasons why below:

- In terms of any payments covered by the CRM Code, it still believes Mrs H didn't have a reasonable basis for believing she was dealing with the genuine FCA, it believes Mrs H failed to show any due diligence during the scam and there were several opportunities to identify something wasn't quite right. Mrs H took no opportunities to confirm they were speaking with the genuine FCA.*
- The emails Mr and Mrs H received should've raised concerns. It's highlighted that Mrs H wasn't corresponding with an email coming from an FCA email domain. The email First Direct saw also contained a series of spelling mistakes and inconsistencies which wouldn't be associated with an organisation such as the FCA.*
- It believes by not undertaking any reasonable checks, Mrs H has been negligent and so she should bear some responsibility for the loss that's been incurred. First Direct believe it unreasonable for the investigator to reach an outcome that absolves Mrs H from any responsibility despite her lack of due diligence and the fact that she lied to the bank to cover up the real reason for the payments on numerous occasions. It believes Mrs H's actions were deliberately misleading which impeded its ability to try and assist her in preventing the scam.*
- First Direct has a duty to process the payment instructions of its customers. And whilst it acknowledges it has a duty to exercise reasonable care and skill in doing so, this doesn't extend to having to question a customer's instructions or act as an 'amateur detective'. To support its conclusions, it pointed to the judgment set down in the case of Philipps vs Barclays.*
- It acknowledges a third-party bank carried out additional questioning which helped to uncover that something might not be quite right and payments from other accounts were blocked. But it says this happened much later on in the scam when significant and numerous payments had been made. It didn't think a more in-depth level of questioning was required from the outset when it initially spoke to Mrs H. It pointed out that it did start to ask further questions and did stop payments when the overall amount being transferred started to become inconsistent with the reasons Mrs H had previously provided. It's also highlighted that resorting to blocking payments when a customer is adamant they want to make them should always be a last resort within the banking industry. So overall, it thinks it acted reasonably.*
- First Direct also said our investigator's reasoning for not recommending it cover any consequential losses is contradictory to her findings about what she thought about the payments themselves. It pointed out that our investigator had reached the finding that even if First Direct had stopped these payments, Mrs H would've carried on regardless, likely from another account. And it didn't think it was fair and reasonable that it should now be held liable for a loss that our investigator felt Mrs H would've incurred regardless of First Directs actions.*

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

What I've provisionally 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 am currently minded to reach a different outcome to that of our investigator – in that I don't think it would be fair and reasonable to uphold Mr and Mrs H's

complaint in full. I'll explain why below.

There's no dispute that Mrs H authorised the payments that are now the subject of this complaint, even though she did so as a result of being deceived by fraudsters. And so, broadly speaking, under the terms and conditions of her account and the Payment Service Regulations 2017, she would be held liable for them in the first instance. But that isn't the end of the story here. Below, I've included a table which sets out the payments made from the First Direct account, as well as a few other points of interest:

Date	Transaction	Amount	Point of interest
21 May 2019 to 14 June 2019			A series of high value payments are made from a third-party bank to the scammers
14 June 2019			£100,000 transferred into First Direct account
14 June 2019 to 1 July 2019			A series of high value payments are made from a second third-party bank to the scammers
1 July 2019	Initial payment to A (domestic)	£10,000	Payment made over the phone – Mrs H explains payment is going to a builder and she would be making further payments to this person. Reference used was 'builder'.
2 July 2019			Mrs H opens a brand-new account with a third-party bank on instructions of the scammer.
3 July 2019	Initial payment to B (international)	£40,000	Payment flagged on First Direct's security systems. A call is made to Mrs H – but only to ask if she is making the payment. There are no questions about the purpose of the payment itself.
4 July 2019 to 11 July 2019	7 x Payments to A (domestic)	£69,999	All with same reference as first payment 'builder'
11 July 2019			£100,000 transferred into First Direct account
12 July 2019	Payment to B (international)	£50,000	
13 July 2019 to 15 July 2019	5 x Payments to A (domestic)	£50,000	
15 July 2019			Mrs H attempts a £35,000 payment from the newly opened bank account to the same international recipient (B). However, it's blocked as the third-party bank have concerns. It requests evidence to show payment is genuine. Mrs H says she's been dealing with B for over a year and the payments relate to an investment. She's not had any returns and she doesn't have much paperwork.
5 August 2019 to 8 August 2019	4 x Payments to B (international)	£199,000	

8 August 2019 to 9 August 2019	5 x Payments to A (domestic)	£50,000	
9 August 2019	2 x Payments to B (international)	£85,000	
10 August 2019	3 x Payments to A (domestic)	£30,000	
12 August 2019 to 14 August 2019	5 x Payments to B (international)	£242,999	
14 August 2019			Mrs H is told by the third-party bank it believes she is being scammed.
22 August 2019	Initial Payment to C (domestic)	£30,000	First Direct have refunded 50% of this payment as they don't believe they provided Mrs H with an 'effective warning' under the CRM code.
22 August 2019	Initial payment to D (domestic)	£25,000	Further call between First Direct and Mrs H. First Direct provide warning about email intercept scams only
22 August 2019			Third-party bank refuses to allow £35,000 payment (see entry dated 15 July 2019) due to concerns payment isn't genuine.
23 August 2019			Two attempted payments to C and D for £25,000 each. These are stopped by First Direct.
23 August 2019			Call between Mrs H and another third-party bank. Third-party bank informs Mrs H it has concerns about the usage of the account and think "something else" is going on. Third-party bank refuse to allow payments through.
23 August 2019			Conversation between First Direct and Mrs H after she tries to make two further payments to C and D. Mrs H is challenged on the nature of these payments. Mrs H maintains cover-story. Unsatisfied, First Direct don't allow the payments through.
24 August 2019			Mrs H makes a further £20,000 payment to scammers via a third-party account.
2 September 2019			Mrs H reports scam to First Direct and the other affected banks.
2 September 2019			First Direct notify beneficiary banks.

Payments covered by the Contingent Reimbursement Model (CRM) Code – “the domestic payments”

Where a customer has been the victim of a scam, it may be appropriate for the bank to reimburse the customer, even though payments have been properly authorised under the CRM Code, which First Direct is a signatory to.

Under the CRM Code, the circumstances where a bank may choose not to reimburse are limited and it is for the bank to establish that a customer failed to meet their requisite level of care, as set out in the Code. A bank may choose not to reimburse a customer if it can establish that:

- The customer ignored what the CRM Code refers to as an “Effective Warning” by failing to take appropriate action in response to such as effective warning.*
- The customer made the payments without having a reasonable basis for believing that:*
 - the payee was the person the customer was expecting to pay;*
 - the payment was for genuine goods or services; and/or*
 - the person or business with whom they transacted was legitimate.*

Mrs H made a total of 22 domestic payments during the scam. It is only these payments that I’ve considered under the CRM Code. This is because the Code doesn’t apply to international payments. I will address the international payments separately later on.

Did First Direct provide an effective warning?

First Direct has said effective warnings were provided to Mrs H prior to all but one of the domestic payments. It’s said its warnings were based on what Mrs H said the purpose of the payments was for - building work. First Direct has said that as Mrs H didn’t tell the truth when asked what the payments were for it couldn’t assist her in the way it could’ve had she been truthful.

First Direct called Mrs H just after she’d initiated the first payment. The remaining domestic payments were then made online. It’s my understanding that First Direct considered what was discussed during the initial call to amount to an effective warning under the CRM code - for this payment and all of the domestic payments that came after until a further call was needed later on. But I’m not persuaded Mrs H was provided with effective warnings either in the initial call itself or prior to any of the subsequent payments made from the account.

Under the provisions of the CRM Code, an effective warning must (as a minimum) be: understandable, clear, timely, impactful and specific. With this in mind, I’m not satisfied what the call-handler was saying to Mrs H met the definition of an effective warning under the CRM code. It wasn’t specific to the type of scam Mrs H was falling victim to and it didn’t offer any further detail as to what this type of scam involved or highlight any other common features of this type of scam. The call-handler also didn’t make Mrs H aware of the consequences of continuing with a payment like this one.

I’ve also not seen any evidence of any subsequent warnings being provided to Mrs H when making the remaining payments to the same payee. Under the requirements of the Code, an effective warning needs to be provided for each individual payment for First Direct to meet its obligations. It isn’t good enough for First Direct to have relied on the initial call.

Overall, I’m not persuaded the conversations had by First Direct met the standards set out in the Code and so it can’t be said these were effective warnings. So, I’m satisfied First Direct can’t fairly apply this as an exception to reimbursement.

Did Mrs H make the payments with a reasonable basis for belief?

First Direct has also said it doesn’t think Mrs H had a reasonable basis for believing she was dealing with the genuine FCA or that she needed to move her and Mr H’s money in order to keep it safe. And I partially agree. I’ll explain why.

Mrs H received a call from a spoofed phone number – which matched the genuine FCA number. There's nothing to indicate Mrs H ought to have known this was possible. The use of this tactic can be particularly convincing and I can understand why Mrs H would have been satisfied that she was talking to the genuine FCA. The caller also appeared to know about the company Mr and Mrs H held investments with and it was heavily emphasised that Mr and Mrs H's money was at risk and something needed to be done in order to keep it safe – as a matter of urgency – which ultimately stopped Mrs H having time to think and process what she was being told. The scammers provided her with a police reference number and explained to her that she couldn't discuss the investigation into the investment company with anyone as it may jeopardise the whole thing.

So, initially, I do think it was reasonable for Mrs H to believe she was dealing with the genuine FCA – at least at the beginning of the scam.

However, I've then gone on to consider whether it was reasonable for Mrs H to continue believing she was speaking with the FCA and making payments to protect her money as the scam evolved. And I don't think it was.

The payees Mrs H was sending money to had no association with Mr and Mrs H, and on the face of it, they didn't appear to have anything to do with the FCA either. And I'm satisfied there ought to have been a point where I'd have expected Mrs H to question why the payments were going to so many different accounts (including some business accounts). I also think the request that Mrs H open a brand-new account with a different bank should've caused concern. She'd had been told previously that the numerous accounts she'd been transferring to were secure - and so it's unclear why she would now have to open a new account to ensure the safety of her funds – and therefore why she also transferred money out of this account. I've also considered the length of time the payments went on for against the reason given for needing to make the payments in the first place - Mr and Mrs H's investments were in immediate danger. And so, I'm not persuaded that Mrs H's had a genuine basis for believing she was dealing with the genuine FCA by the time she opened the brand-new account on 2 July 2019.

Overall, I'm satisfied First Direct failed to provide effective warnings to Mrs H throughout the course of the scam. So, under the requirements of the Code, I'd usually be minded to say that it ought to have recognised its share of the responsibility for the loss when Mr and Mrs H initially complained. I'm satisfied that at this point, First Direct should've refunded 100% of the first payment made from this account and 50% of any loss thereafter - given that I don't think Mrs H had a reasonable basis for believing the payments were legitimate from this point onwards. However, I note that one of the receiving banks involved has also accepted some liability for Mr and Mrs H's overall loss and I have taken this into consideration when deciding what I now feel would amount to fair compensation in order to resolve this complaint.

Usually, in a scenario such as this, where there are three parties to a complaint (the sending bank (First Direct), the receiving bank and the customers (Mr and Mrs H)) we would look at each parties obligations under The Code and responsibility/liability for any loss would be apportioned as to whether each party had met their obligations or not.

So, where the receiving bank tells us they failed in their obligations under The Code and where I am persuaded that First Direct also failed in its obligations under The Code, a fair and reasonable offer would usually amount to the consumer being refunded two thirds of the overall loss. However, in this particular case, the receiving bank has already refunded £190,000 and First Direct have already refunded £15,000 and so I am satisfied that Mr and Mrs H have already been refunded more than two thirds of the payments covered by The Code. So, I'm satisfied Mr and Mrs H have already been refunded more than I would think

fair and reasonable in terms of the domestic payments and so I don't think it would be fair and reasonable for First Direct to have to pay anything further in regard to the domestic payments now.

Payments not covered by the Contingent Reimbursement Model (CRM) Code – “the international payments”

Next, I have thought about whether there was anything else First Direct could've done to uncover the scam and prevent the international payments from leaving Mr and Mrs H's account. As the CRM Code only applies to domestic payments – this means it can't be considered in relation to the international payments Mrs H made.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account. As Mrs H also authorised the international payments, the starting position is that she is held liable for them.

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.*

I want to stress that I am aware of the case of Philipps v Barclays that First Direct has directed me to. And notwithstanding what the judge said, we have a duty to resolve complaints based on what we think is fair and reasonable in all the circumstances of the case, taking into account not just the law, but also regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. And I'm satisfied given what I've set out above, that there are certain scenarios where First Direct should ask questions about a payment before it processes it on its customers behalf – it should be on the look-out for unusual and out of character transactions.

Having reviewed the pattern of transactions made from the First Direct account, I agree with our investigator that the disputed activity is unusual and out of character when compared to the previous undisputed activity on the account. In particular, I'm satisfied that the first international payment should have stood out as somewhat odd – it is requested after a large transfer into the account, it is going to an international account, to a new payee and it is significantly higher than any recent previous transactions – it is 4 times higher than the previous scam payment. And given that First Direct did speak to Mrs H about this payment as it flagged on its security systems, I'm satisfied First Direct thought this too.

I've listened to a recording of the call that took place between Mrs H and First Direct in regard to this payment, and it appears that the purpose of the call was to establish whether

Mrs H had made the payment or not. Once Mrs H confirmed she had requested the payment herself, the call came to an end.

Given that I'm satisfied that this first international payment was out of character when compared to previous activity on the account and that Mr and Mrs H were of an age known to be targeted by fraudsters, I think First Direct needed to do more than just ask whether Mrs H had made the payment or not to satisfy itself she wasn't at risk of financial harm from fraud.

But whilst I'm satisfied First Direct ought to have done more due to the unusualness of the international payment – I then need to think about what an appropriate level of intervention should've been and also whether any of Mrs H's likely answers would've put First Direct on notice that Mrs H was at risk of financial harm from fraud.

Had Mrs H been asked for the purpose of the payment, I'm satisfied she would have answered in the same way as when she was asked this question both by First Direct much later on, and also when challenged by a third-party bank. I'm persuaded she would've said the payment was for an investment. Knowing this, I'd have then expected First Direct to have followed this up with a series of questions about the investment to satisfy itself everything was above board. Our investigator set out some examples of additional questions which could've been asked. I won't list them here again but I'm satisfied the examples she provided would've been reasonable questions to ask. I've then thought about what would've most likely happened if Mrs H had been asked these questions. To help me decide this, I've taken into account Mrs H's responses during the call with First Direct on 23 August 2019, as well as her responses to another third-party bank when she was challenged on a payment she was making to the same international payee.

When Miss H was asked about the international payments by First Direct on 23 August 2019, she responded to say the payments were to an "investment company which is going to make investments for me". No further detail or clarification is provided about the investment or company - aside from her confirming she'd been dealing with them for a while.

Mrs H also confirmed she'd been making payments to the international payee from a third-party account before starting payments from the First Direct account. When asked why she was doing this if she was already making payments from another account, Mrs H responded to say it "makes sense to move money from a different place". Mrs H provided no further clarification. Similarly, when questioned by the third-party bank, Mrs H only confirmed that she'd found out about the company through a friend. She also confirmed she hadn't seen any returns and she was also unsure if her friend had any either. There was no paperwork available.

I find all of the answers that Mrs H provided to be somewhat vague. She doesn't sound like she knows any detail about the investment she's entering into at all – especially given the amount she is allegedly investing. And I'm satisfied she would've responded in a similar way had she been asked further questions when making the first international payment. As a result, I'm persuaded that Mrs H would've struggled to answer any reasonable probing questions put to her by First Direct and I'm not persuaded she would've been able to provide any real detail about the investment or the company itself. And given the prolific nature of investment scams at the time, I think this should've rang alarm bells for First Direct.

As I am satisfied that First Direct should have had concerns here, I'm satisfied that it should've done more to satisfy itself that what Mrs H was making a legitimate payment. I have noted what First Direct has said about blocking payments that a customer is requesting being a last resort, and I don't necessarily think that the payments should've been blocked but it would've been reasonable for First Direct to have placed a hold on the payment whilst

it requested Mrs H provide it with some documentation showing the investment she was entering into. Any genuine investment would be accompanied by appropriate documentation and this would have given First Direct the opportunity to satisfy itself that everything was above board before moving forward. And we now know that this would've likely uncovered the scam.

The third-party bank Mrs H had been dealing with requested that Mrs H provide evidence to show she'd been dealing with this investment company for the amount of time she'd claimed, and for some further details about the investment/company itself. I'm satisfied Mrs H would've most likely provided the same document she provided to the third-party bank, had First Direct requested this.

I've seen a copy of the document in question which appears to have been put together and given to Mrs H by the fraudsters in order to assist her in maintaining her cover-story. It's lacking in detail when it comes to what the investment actually is. There's also no other information that you'd reasonably expect to see in an investment document – such as rate of returns or the duration of the investment. Overall, I'm not satisfied that the document would've persuaded First Direct that Mrs H was entering into a genuine investment.

I've also considered what might've happened had Mrs H been asked to evidence her previous dealings with this company. I note Mrs H had said she had been dealing with this company "for a while" or "more than a year" depending on which bank she'd spoken to. But had a quick check been carried out on the name of the company Mrs H was supposedly dealing with, it would've become apparent that the company in question had only been in existence since October 2018 – much less than the year and more than Mrs H had claimed she had been dealing with it.

Overall, I'm persuaded that a continual set of vague answers, coupled with an inability to document anything which supported her assertions would've meant First Direct ought to have been concerned that Mrs H was at risk of falling victim to some kind of fraud or scam. And whilst I appreciate Mrs H herself may not have necessarily confessed to what was actually going on – this doesn't mean First Direct should've carried on regardless.

First Direct has confirmed that the conversations it had with Mrs H on 23 August 2019 resulted in it rejecting the two payments she had attempted to make earlier on the same day – as well as applying restrictions to her account which prevented any further transfers from being made. Whilst I've taken on board First Direct's arguments that it wouldn't have been appropriate to have intervened and taken such decisive action at an earlier stage when the circumstances leading up to the payments were less suspicious, I don't agree. The first international payment was unusual enough to warrant further challenge and I'm not persuaded that Mrs H would've been able to satisfy First Direct that this was a legitimate payment had any reasonable probing questions been asked about it. And so I'm satisfied that had a similar conversation taken place after the first international payment and had further evidence of the investment not been provided – I think it would've been reasonable for First Direct to have taken similar steps – namely to prevent this and any further attempted payments which appeared out of character for the account.

Given all of the above, I'm satisfied that First Direct could've and should've prevented the first, as well as any further international payments made, just as it did after the conversation with Mrs H on 23 August 2019.

I agree with First Direct that Mrs H, under the spell of the scammers, may have considered alternative ways of moving the money on still. However, this does not detract from the fact that by failing to take appropriate action in regard to the first international payment, First

Direct has failed in its obligations to protect Mr and Mrs H from potential harm from fraud and First Direct must now take responsibility for some of Mr and Mrs H total losses.

However, I'm also persuaded that Mrs H should also bear some responsibility for this loss too. As previously mentioned, I don't think it was reasonable for Mrs H to have continued to make payments without completing further checks from the beginning of July 2019. And Mrs H continued to make payments despite various banks already telling her that she was being scammed in some capacity. Despite this, Mrs H still proceeded to make further payments from the First Direct account. It therefore appears to me that the most fair and reasonable outcome is that First Direct and Mrs H should share responsibility for the international payments that left the First Direct account. First Direct should not have allowed Mrs H to continue to make payments from the point she should have been reasonably challenged. But at the same time, Mrs H could've taken further steps to mitigate her own losses too. I also think she made at least some of the payments without consideration of the various warnings various different banks had given her. So I think a 50% refund of all the international payments that took place from 3 July 2019 is reasonable.

Finally, I've thought about First Direct's actions when Mrs H told them on 2 September 2019 that she'd been scammed. However, based on the evidence I've seen from the UK receiving banks, all but a negligible amount (under £100) had already been moved on by the time Mrs H told First Direct about the scam. So regardless of when First Direct then notified the receiving banks, there was no chance of being able to recover any more than what it was ultimately able to.

First Direct doesn't have the same obligations when it comes to international payments. However, I have seen evidence that it attempted to recall the payments and notify the international bank on 3 September 2019 – just under 24 hours after it was put on notice by Mrs H. In these specific circumstances, I don't believe this is unreasonable. And unlike the UK based receiving banks, there would've been nothing further First Direct could do – as it was then ultimately up to the international bank as to whether it wanted to respond or not.

Summary

In summary, I'm not recommending First Direct do anything further in relation to the payments covered by the CRM Code.

However, I'm currently minded to say First Direct should be liable for refunding 50% of the loss incurred on all of the international payments. This is because I'm satisfied additional intervention was needed when First Direct spoke to Mrs H on 3 July 2019. And it would've been reasonable for First Direct to block this and any future payments. That being said, Mrs H also ought to have been reasonably aware that something wasn't right by this point. So I'm satisfied that it's reasonable to say Mrs H should bear some responsibility for this loss as well.

My provisional decision

I am currently minded to partially uphold this complaint. I think that fair compensation amounts to a 50% refund of all international transfers that left Mr and Mrs H's First Direct account.

My provisional decision is that HSBC UK Bank Plc (trading as First Direct) should refund 50% of all international payments made from 3 July 2019 onwards. It should also simple interest on that sum at 8% per annum from the date of loss to the date of refund."

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.

Mr and Mrs H agreed with the findings I made in my provisional decision. HSBC UK Bank Plc (trading as First Direct) did not respond with any further points. As I haven't been provided with anything further to consider, I see no reason to depart from the findings made in my provisional decision, for the same reasons, and I partially uphold this complaint.

My final decision

My final decision is that I partially uphold this complaint against HSBC Bank UK Plc.

HSBC Bank UK Plc should now:

- refund 50% of all the international payments that left Mr and Mrs H's account from 3 July 2019 onwards
- it should also include 8% simple interest per annum on each payment from the date of loss to the date of refund

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Ms H to accept or reject my decision before 21 April 2022.

Emly Hanley
Ombudsman