

## The complaint

Mr L complains HSBC UK Bank Plc (trading as first direct) won't refund the money he lost when he fell victim to a scam.

## What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts aren't in dispute, so I'll focus on giving the reasons for my decision.

For context, I've set out a table of the disputed payments. I've not included the (now refunded) card payments as these didn't form part of Mr L's referral to our service:

Date	Amount	Description
19/05/2020	£2,500	Payment to Alephlink via online banking
20/05/2020	£5,501	Payment to Alephlink via online banking
21/05/2020	£4,000	Payment to Alephlink via online banking
22/05/2020	£3,000	Payment to Alephlink via online banking
27/05/2020	£1,500	Payment to Alephlink via online banking
29/05/2020	£3,000	Payment to Alephlink via online banking
02/06/2020	-£90.14	Successful withdrawal from the trading account
02/06/2020	£2.47	Transaction fee
03/06/2020	£5,103	Payment to Alephlink via online banking
04/06/2020	£5,007	Payment to Alephlink via online banking
<b>Total loss</b>	<b>£29,523</b>	

## 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.

I agree with the conclusions reached by the investigator for these reasons:

- In line with the Payment Services Regulations and general banking terms, first direct has a duty to execute authorised payment instructions without undue delay. So although it's not disputed that a scammer duped Mr L into making these payments, the starting position is that he's liable.
- That said, there are some situations where we believe that banks—taking into account relevant rules, codes, and best practice—ought to have identified a potential fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If they failed to do so, and that failure led to a fraudulent loss for their customer, it may be fair to hold them liable.

- Initially, I don't think first direct had cause for concern. The £2,500 didn't appear so unusual, within Mr L's general account activity, that I'd have expected it to perform further checks. Nor are there any indications that the payment could have been successfully recovered; it was loaded onto the trading platform. But when Mr L paid a further £5,501 the next day, I think first direct ought to have been suspicious. There was a known pattern of fraud emerging, and the activity was uncharacteristic for Mr L. He didn't have a history of making payments of this size, and he was transferring over £8,000 to a new, international payee in two days. So I think first direct should have performed further checks to satisfy itself on whether all was well.
- If first direct had appropriately questioned Mr L about the circumstances of the £5,501 payment, I think he would have explained he was investing with Blix Group – who'd told him they were regulated. So first direct could have checked the company, or guided Mr L on how to do this. That would have revealed, not only were Blix Group unregulated, the FCA had issued a warning against them. As a new investor, I think Mr L would have heeded a warning/direction about this from his bank, and so would have realised it was a scam - preventing him from making this or the subsequent payments.
- First direct disputes that Mr L would have mentioned Blix Group, as he didn't when reporting the scam. But he wasn't asked about this. And he didn't name anyone else, such as Alephlink (who didn't – yet – have an FCA warning against them) as the scammers; he only mentioned them when explaining how the disputed transactions showed up on his statements. And both companies (Alephlink and Blix Group) have the same address, lending credibility to Mr L's assertion about who he was dealing with. He's consistently referred to Blix Group as the perpetrators. So if asked at the time, I'm persuaded he would have mentioned them – uncovering the scam.
- I've considered if Mr L should bear some responsibility by way of contributory negligence. And I think he should. He says he looked up Blix Group's reviews and was reassured, but I've seen negative reviews predating his payments. And when he reports that he *did* start seeing negative reviews, and struggled to get responses from them about withdrawing more funds, he was able to uncover that they weren't regulated. But while first direct thinks it would be fair to reduce the compensation by 50% to reflect this, I'm persuaded a 20% deduction is fairer. This was still a sophisticated scam, seemingly involving a fake trading platform, and Mr L was an inexperienced investor. He knew less than the bank about the warning signs and what to check.

### **Putting things right**

HSBC UK Bank Plc should refund Mr L's loss from the payment of £5,501 onwards, less a 20% deduction for contributory negligence. And it should pay 8% interest on this amount from the dates of payment to the date of settlement.

If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr L how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons given above, I uphold this complaint. I direct HSBC UK Bank Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 5 August 2022.

Rachel Loughlin  
**Ombudsman**