

The complaint

Mr B complains that HSBC UK Bank Plc trading as first direct gave him wrong information about a transfer he attempted and gave him poor customer service.

What happened

Mr B opened a savings account with a third party building society. He transferred £1 from his First Direct account to his third party account to ensure a larger transaction would be successful. As this payment showed on his third party savings account, he attempted to transfer a further £15,499 on 27 August 2021, from his First Direct account.

As this didn't show in his third party account in a timely manner, Mr B initially thought that the funds were taking a little bit longer to transfer as they may be subject to additional checks to ensure the transaction was genuine. Mr B then received a text message from First Direct, requesting him to confirm if the transaction was genuine. Mr B responded to the text to ensure them it was genuine, but the transfer still didn't show in his third party account.

Mr B made a complaint to First Direct on 31 August 2021. He said that his balance was £15,499 more than it should be as his funds disappeared on 27 August, but they weren't transferred to his new third party account. Mr B had included a response from the third party building society which he received earlier in the day. The message to Mr B said that their payments platform had yet to pick up a search matching for a payment of £15,499 being paid into his account. But with the payment from First Direct, this could only be traced from the senders (First Direct) end.

First Direct responded to Mr B on 13 September 2021. They said that as part of their payment checks on the transfer, their fraud team sent him a text message to the mobile number held on their system to confirm the payment to be genuine. But with their fraud team not receiving any response, the payment was held until close of business, at that point the payment followed the process of being returned into his account.

Mr B responded to First Direct to explain that while the matter was unresolved, he wouldn't transfer the money to his third party account in case First Direct transferred the money as this would cause him to be significantly overdrawn. This meant he was losing out on interest on his third party account. Mr B explained the impact this was having on him as the worry had caused him distress and anxiety. He also said that he had to keep track of the matter and this inconvenienced him. Mr B told First Direct that he responded to the text from their fraud team only three minutes later to confirm the transaction was genuine. He instructed First Direct to not process the original transaction as he may have found a better savings account.

First Direct responded to Mr B on 24 September 2021. They said that the payment had been reversed by their fraud team despite Mr B sending them a text to confirm the transaction was genuine and they apologised for the inconvenience and frustration this caused. First Direct also apologised for their response to his original complaint not acknowledging the action he had taken to ensure the payment was released, and they apologised for not confirming what was happening with the payment in their earlier communication.

First Direct clarified that once their fraud team reverses a payment, they would not attempt to send the payment again, unless their customer requests this. They explained how Mr B could make an external payment if he still wished to do so, but they also stated the payment could still be subject to further checks. First Direct credited £75 to Mr B's account to apologise for them not acknowledging they failed to send his payment after he confirmed it was genuine, their response containing incorrect information, not responding to his message dated 14 September 2021 in a timely manner and him losing interest owing to the payment not being released on 27 August 2021.

Mr B brought his complaint to our service. Our investigator felt that the £75 First Direct credited to Mr B's account was reasonable for the errors they had made. Mr B asked for an Ombudsman to review his complaint. He made a number of points. In summary, he said that he shouldn't have had to discover the problem, investigate the matter, complain to First Direct, discover what they had done wrong, be told incorrect information by them and tolerate incorrect information told by them. He also said that he hopes his case can be used to reduce the moral hazard of banks not suffering the consequences of their actions and inactions and to prevent consumers having to suffer because of the failures of financial institutions.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr B has made a number of points to this service and First Direct and I've considered and read everything he's said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of his complaint in deciding what's fair and reasonable here.

I need to explain to Mr B that complaint handling by a business isn't a regulated activity and as such, the issues he's raised that relate directly to how First Direct have investigated his complaint, such as how long they take to issue a response to a complaint or how they send a response doesn't come under my powers to consider.

I'd like to emphasise that this service is not the regulator. Nor do we act as the enforcer for the regulator. The regulator is the Financial Conduct Authority. Our service acts as an informal dispute resolution service for complaints about financial businesses. We look at the circumstances of individual complaints and, on a case by case basis, taking into account relevant industry guidance for example, make findings about whether a financial business has failed its customer in any way.

Where we find it has, we make awards designed to make the business put things right with the complainant customer. Our awards are not designed to punish a business or to make it change the way it acts in order to protect other customers in the future. That is the role of the regulator.

But I can look into whether First Direct treated Mr B fairly with the events that occurred from when he attempted to make the payment to his third party savings account. I'm not persuaded that they have treated him fairly and I'll explain why.

When Mr B confirmed that the transfer was genuine, the transfer should have completed, and the funds should have been paid to his third party savings account. But First Direct made an error and reversed the money back to Mr B's account on 27 August and I've seen

evidence that the payment was returned on the same day.

Mr B had to contact First Direct to let them know the money hadn't been transferred and to try and find out why this was when he had confirmed the transaction was genuine, so this would have given First Direct an opportunity to put things right to help mitigate the impact of the error.

I say this as when Mr B notified First Direct on 31 August that the transfer hadn't completed, if they would have looked into this and told Mr B exactly what happened, apologised for it and offered him appropriate compensation, then I'm satisfied that although Mr B would have been let down by what happened, the impact on him wouldn't be as great as it ended up being and I'll explain why.

On the surface, it may seem that there was little impact to Mr B as his funds left his account and were credited back to his account on the same day. But, because he hadn't been informed of what happened, then Mr B was inconvenienced as he had to contact First Direct a number of times to investigate what happened.

Mr B has told our service that he didn't want to transfer the funds which had been paid back to his account as he was worried that First Direct could act upon his text confirming the transaction was genuine - at a later date, which would result in him being significantly overdrawn and incurring charges and/or interest.

As First Direct hadn't made it clear to Mr B that they wouldn't attempt the transaction again, then it's understandable why Mr B could be distressed about the transfer and wonder if the transfer would be processed or not at a later date. And while Mr B told First Direct on 14 September not to transfer the money now, this wouldn't mitigate the impact the error had on him as he hadn't had a response until 24 September, when they clarified they wouldn't attempt to make the transfer again after it had been reversed.

But that's not all that would have distressed Mr B. First Direct told him incorrect information when they responded to him. They said that he hadn't responded to the text the fraud department sent to him, when Mr B was fully aware that he had responded to them, only three minutes after the text they had sent him. So although First Direct had a chance to put things right for Mr B here, they didn't do so and they told him incorrect information.

By giving Mr B incorrect information here, this will have frustrated Mr B and inconvenienced him further by having to respond to First Direct to explain what he actually did to try and get the transfer to go through. It was only on 24 September that First Direct clearly explained to Mr B that he had indeed sent the fraud team a message, that the fraud team reversed the payment in error and that they wouldn't be trying to make the transfer on his behalf again.

If Mr B would have received this explanation originally, I'm satisfied that it would have helped to mitigate the events which had occurred, but the incorrect information on 13 September prolonged the distress Mr B had over this issue.

As First Direct could not go back and undo the original error after they had made an error in returning the money to Mr B's account as opposed to processing the transfer, then I would have expected them to apologise to Mr B, realise the impact their errors had on Mr B and pay him appropriate compensation. First Direct did apologise multiple times in their response on 24 September and they credited £75 to his account.

So I've considered whether the £75 recognised the impact of the multiple times they let Mr B down here. I'm not persuaded that it did and I'll explain why. Mr B attempted to make the transfer on 27 August 2021. But it appears it was only on 24 September 2021 that Mr B was

informed of what happened and that the fraud team would not re-attempt the transfer. So I'm persuaded that Mr B would have been distressed over this timeframe with what was happening with his money, especially after he was told incorrect information by First Direct in their first response to him.

And while First Direct would have been aware that a reversed payment would not be attempted again, I would not expect Mr B to be aware of this and that is why I can understand his comments about this issue causing him prolonged anxiety and distress as it was nearly a month before he had clarity on the situation. So I've considered what would be a reasonable amount of compensation for the issues that happened here.

Compensation is a discretionary remedy that we sometimes award if we feel that a business has acted wrongfully and therefore caused distress and inconvenience to their customer over and above that which naturally flows from the event. When we recommend compensation, it is often modest and within our established guidelines.

I'm persuaded that an extra £175 compensation would be fair, to bring the total amount of compensation to £250. I say this as First Direct had earlier opportunities to try and put things right for Mr B, but they told him incorrect information and it was only through Mr B's persistence that First Direct were clear to Mr B about what happened to his money, nearly a month after the original error occurred, but Mr B felt he couldn't move the money in case First Direct attempted to act upon his original request to move the money as he would be unaware of First Direct's process to not move the money after it had been already reversed. So it follows I intend to ask First Direct to put things right for Mr B."

I invited both parties to let me have any further submissions before I reached a final decision. First Direct accepted the provisional decision. Mr B did not accept the provisional decision. He made a number of points about First Direct. In summary, he said actions are more important than words and First Direct should suffer consequences for not telling the truth of what happened and if they won't suffer voluntarily then they must be made to suffer.

Mr B said that while my provisional decision mentions First Direct apologising, this is not true. He said an apology is when someone recognises a wrongdoing and puts right everything that has gone wrong as a result of that wrongdoing, paying appropriate compensation for having done wrong (which isn't the same as putting right the wrongdoing), suffers the appropriate punishment for doing wrong and then they may issue words of an apology – usually expressing sorrow for their failings. Any apology before this exasperates the wrongdoing.

He said the wrongdoings by First Direct delayed his search for a new home, caused huge anxiety, caused him to look for a home in a less expensive area, has wasted many months and therefore cost him thousands of pounds in rent at his former home.

Mr B said if our service lacks the power to punish wrongdoers, we should make this clear by saying in my decision what we would do if we had the power. He said where we lack the power to punish wrongdoers, this does not stop wrongdoers from punishing themselves by doing voluntarily what we think they should do but cannot require them to do.

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've read everything that Mr B has sent in response to my provisional decision. He is aware that our service does not have the power to make a business suffer. As I mentioned in my

provisional decision “*our awards are not designed to punish a business or to make it change the way it acts in order to protect other customers in the future. That is the role of the regulator.*” So I’m unable to do this here.

I’ve considered what Mr B has said about me saying in my decision what I would do if I had the power to do so, as this may make First Direct carry out the actions I would make them do if I had the power to do so. But this is not the role of this service. Our service is intended to be an alternative to a court. Mr B is still able to take First Direct to court. A court may be able to enforce what he is wanting as a resolution to this complaint.

I’ve read what Mr B has said about the impact that First Direct’s actions has had on him buying a house and the temporary loss of thousands of pounds off his savings was catastrophic. But as I mentioned in my provisional decision, the money was reversed back into his account on the same day. So I can’t hold First Direct responsible for what house Mr B chose to buy and in what area, as this would be out of their control.

I’ve noted the strength of Mr B’s feelings regarding First Direct apologising, but not really apologising based on their actions and apologising when the issue is unresolved. Mr B also wanted me to send First Direct a copy of his responses to my provisional decision so they can’t claim ignorance of their failures and wrongdoings. I can assure Mr B that I will ask our investigator to forward his emails to First Direct.

In summary, Mr B’s response hasn’t changed my view and my final decision and reasoning remains the same as in my provisional decision. I know Mr B will be disappointed, but I hope he understands my reasons.

Putting things right

In my provisional decision I said I intend to ask First Direct to pay Mr B an extra £175 compensation for distress and inconvenience. I’m still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold the complaint. HSBC UK Bank Plc trading as first direct should pay Mr B an extra £175 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 22 July 2022.

Gregory Sloanes
Ombudsman