

The complaint

Mr K is unhappy that HSBC UK Bank Plc, trading as first direct ("First Direct"), won't refund payments that were made when he fell victim to a 'safe account' bank impersonation scam.

What happened

In June 2021, Mr K fell victim to a cruel scam, in which he was tricked into believing he needed to move the funds in his First Direct accounts to a safe account.

He's told us he received a text message purporting to be from First Direct. This informed him of suspicious activity on his account and that the account had temporarily been blocked. The text message said a member of the fraud team would contact him shortly and a reference number was provided.

Shortly after the text message, Mr K received a call from someone claiming to be from First Direct's fraud team. Unbeknown to him at the time, this was not genuinely a call originating from his bank, but instead he was speaking to a scammer.

Mr K moved money from his savings account with First Direct into his First Direct current account. He then proceeded to make two payments – the first for £600 and a second payment of £5,000 from his current account to the account details he was given by the scammers.

To make the initial payment, Mr K set up a new payee. At the time of setting up the payment, a Confirmation of Payee (CoP) result was given. In brief, it said the payee account details are invalid. It said it can't check the details Mr K had entered with their bank and to check with the payee directly.

Mr K recalls a CoP pop up but has said he didn't read this as he was told by the scammer what to press.

Mr K has explained the scammer talked him through making the payments step by step. Mr K selected the payment purpose as 'friends and family' when making the payments and was shown a scam warning. In summary, this warned that fraudsters might call to ask you to move money to a safe account. It says neither First Direct or any genuine organisation would ever ask to do this, but criminals will. It goes on to say fraudsters can pose as a friend or try to get to know you through social media or dating sites, then ask for money.

First Direct have also said that before Mr K confirmed the payments, he was given a warning which said criminals pretend to be people you trust, like the police or even First Direct. It said if an unexpected request to make a payment had been received, to stop and contact the party using their contact details from a trusted source. It also said that First Direct will never ask you to move money.

Mr K has told us that when going through the stages of making the payments he didn't read the information - that it was more a case of looking out for the buttons he was being directed to select.

When the scammers asked Mr K to make a further payment of £4,000 to a second set of account details, Mr K says his girlfriend's mother, who works in banking, overheard what was happening and hung up the call. It was at this point Mr K became aware he'd been scammed.

First Direct is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances.

When Mr K reported what had happened, First Direct contacted the receiving bank. Unfortunately, only £4.17 could be recovered. First Direct didn't think it was liable to refund Mr K his remaining losses.

Mr K wasn't happy with this outcome and he complained to First Direct. It maintained its position. First Direct said it had given Mr K scam warnings when he sent the payments. It said he didn't carry out sufficient checks to be sure who he was speaking to and so should have exercised more caution. Therefore, it didn't think it was liable to reimburse Mr K under the CRM Code.

Mr K remained unhappy and brought his complaint to us.

One of our Investigators looked into things. He believed the complaint should be upheld. He didn't find that the warnings First Direct had given fully met the requirements of an effective warning under the CRM Code definition. So First Direct hadn't established that Mr K had ignored an effective warning. Our investigator also felt that when Mr K had made the payments, he'd held a reasonable basis for believing that the payments were necessary to safeguard the security of his bank accounts.

First Direct disagreed. In summary, it reiterated its position that it had given Mr K effective warnings. It added that as it considered Mr K had ignored effective warnings, an exception to reimbursement could be applied and, therefore, whether or not Mr K had a reasonable basis for belief was not relevant. However, First Direct said one of the warnings given stated that it would never ask a customer to move money, but criminals would. To compound matters it says it was a clearly significant red flag that Mr K was being told to ignore warnings and, the fact he chose to ignore the warnings was unreasonable in itself. It follows that First Direct considers any belief Mr K had that the payments were legitimate was not reasonable.

I issued my provisional decision on 25 August 2022. In it, I explained why I intended to uphold Mr K's complaint in part. An extract of that decision is set out below and forms part of this final 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 currently intend to uphold this complaint in part. I will now explain why.

I'm extremely sorry to hear about what happened to Mr K. I can understand entirely why he feels strongly that the full loss should be reimbursed by First Direct, and why he doesn't accept it's fair the bank isn't taking responsibility.

However, while I have sympathy for Mr K in what happened, I have to recognise that the principal cause of his losses here were the scammers who deceived him. I must also take into account that First Direct has a primary obligation to carry out the payment instructions its customers give it.

The starting point in law is that Mr K is presumed liable for any transactions on his account that he authorises. He did authorise all the payments that are the subject of this complaint, even though he did so as a result of a scam.

But that's not the end of the story. First Direct is signed up to the CRM Code and so ought to refund victims of authorised push payment (APP) scams in all but a limited number of circumstances.

Despite offering additional protections, the CRM Code includes provisions allowing a firm not to reimburse APP scam losses fully where the firm can establish that the customer failed to take sufficient care when making the payment (often referred to as the exceptions to reimbursement). Relevant here, this would include ignoring an effective warning by not taking the appropriate steps in response. It could also include where the customer made a payment without a reasonable basis for believing that the person the customer was dealing with was legitimate, or that the payee was the person the customer was expecting to pay.

First Direct has said that one or more of these exceptions to reimbursement apply in Mr K's case. And I currently agree that is the case, which is why I'm reaching a different outcome to that of our Investigator.

Did Mr K meet the requisite level of care required of a customer under the CRM Code?

I've first thought about whether Mr K had a reasonable basis for belief when he made each payment.

I consider that several elements of the scam were convincing, including the bank's spoofed phone number, the reference number provided, which matched the text message Mr K had received from who he believed to be First Direct's Anti-Fraud department and, the scammer knowing his personal information (such as Mr K's email address).

However, Mr K has also said that he was sceptical and suspicious of the call. Mr K within his contact with our Investigator said that due to his scepticism at the time of the first payment he told the scammer that he didn't fully trust this, and even after checking the number online and seeing it was a number for First Direct, he still had some doubts. Because of these doubts he's explained to our investigator that he made an initial payment for a lower sum than that requested by the caller - £600 instead of £6,000.

From the information I've been given, I have noted inconsistencies within what Mr K has said to the bank and to our service. In calls with the bank when discussing the scam, Mr K referred to making a mistake and missing a '0' when making the initial payment but then to our Investigator he's said he purposefully sent a lesser amount to that requested due to being sceptical about it.

During a call with the bank, I'm also mindful Mr K said that he was asked by the scammer who he banked with and he explained that he didn't give the honest answer and in fact told the scammer he banked with a different bank. He also told the bank

that when he was given the second account details to make a further payment to, he searched this online and that's when he saw it was for a different bank and not First Direct. He told the bank he hung up at this point and called to report the scam. Yet this isn't consistent with what he explained to our Investigator, where he's said the call ended when his girlfriend's mother hung up the phone and, it was afterwards that he found out the account details were for another bank.

Based on everything I've seen and been told, it appears Mr K made a conscious decision not to pay the amount he was asked to by the scammer, who was purporting to be from his bank, given the doubts he had at the time. I don't currently think I can safely say Mr K was convinced by what he'd been told at the time of the initial payment as given the nature of his actions, it suggests that due to his doubts he looked to mitigate any possible loss in case all was not quite as it seemed.

I do recognise Mr K has said when making the £5,000 payment, given the length of time he'd been on the phone, whilst he was sceptical, he was convinced by things along the way – by the way the scammer spoke to him, what he was being told and what he needed to do. Mr K says the scammer knew what would appear and what to press/select. He feels things started to ring true in terms of this being how things worked.

While I've thought carefully about what Mr K has said, I can't ignore the inconsistencies in what he's told the bank and our service. And because of these inconsistencies I'm not convinced I can safely say that Mr K was under the spell of the scammer and that he believed he was speaking with his genuine bank at the time of making the payments.

On balance, given such doubts, I'm persuaded it would've been more reasonable for Mr K to pick up on other red flags. For example, there was an attempt at CoP but Mr K's said he was talked through the process and told he didn't need to read the messages, he was asked to make a payment of £6,000 to the new account by the scammer, yet after making the lower payment of £600 he was then asked to make a second payment of £5,000. I've not currently seen any information which explains why the second payment Mr K was asked to make didn't add up to the amount the scammer initially asked him to move to the new account.

With all this in mind, I'm afraid I don't currently agree that Mr K had a reasonable basis for believing that he was speaking with a legitimate person from his bank. And so, it follows that I'm not currently satisfied Mr K has met the requisite level of care under the CRM Code.

As I've concluded Mr K didn't meet the requisite level of care, I've gone on to think about whether First Direct met the standards required of it, either under or outside of the CRM Code.

Should First Direct have done more here?

Under the CRM Code, First Direct is required to provide an effective warning when it identifies an APP scam risk. So I've considered whether it should have done so here – in other words whether it should have identified such a risk in relation to each payment when it was being made.

I've therefore reviewed Mr K's payment history to determine his normal pattern of account usage. Having done so I don't consider the first payment, for £600, would

have stood out enough from that normal account activity to have prompted First Direct to be concerned he might be at risk from an APP scam.

However, I do consider that the second payment, for £5,000, in particular because it was being made in quick succession to payment one, should have prompted First Direct to have concerns that Mr K might be at risk of financial harm. As a result, I think it ought to have taken further steps here.

The CRM Code required that First Direct should have given Mr K an effective warning while he was making this second payment.

First Direct did provide a scam warning to Mr K, but I don't currently think I need to make a finding on whether this was an effective warning as set out by the Code in this particular case. I say this because, Mr K has explained he'd not read any of the warnings that were presented when making the payments. He's explained he was talked through each screen - what to select and what to click on. So, I'm not currently convinced that the provision of an effective warning would've made a difference in this particular case.

But that does not represent the extent of what I'd expect the bank to have done. Where it identified a specific scam risk (which I think it should have here) then it should have taken proportionate steps to assure itself that its customer wasn't about to suffer financial harm through fraud or a scam. I think there was enough going on here, that First Direct ought to have fairly and reasonably have got in touch with Mr K to ask him about the £5,000 payment he was asking to make.

Had it done so, I'm satisfied this would've made a difference in this case. Given Mr K by his own testimony had doubts, had questions been asked about the payment, I'm persuaded the scam would've unravelled and that the loss of £5,000 could've been prevented.

However, for the reasons I've explained above, I'm not persuaded Mr K had a reasonable basis for belief when making the payment. I consider it fair and reasonable in all the circumstances that both sides should share equal responsibility for the losses that resulted from payment two. That means I consider it fair that First Direct should now reimburse Mr K 50% of the sum he lost by making that payment.

In saying all of this, I want to stress again that I am very sorry to hear that Mr K was the victim of this scam. The actions of those behind the scam were cynical and took no regard of the impact it would have on Mr K. He is the victim of a crime. But I can only look at what First Direct is required to do – I cannot consider the actions of those who have tricked and deceived Mr K in that.

I understand that this is not the outcome Mr K wants and I recognise the impact all of this has had on him. But I can reassure Mr K that I've carefully considered all the details of what happened and of his complaint before reaching what I currently consider to be the fair and reasonable outcome in all of the circumstances.

To put things right I said HSBC UK Bank Plc, trading as First Direct should:

- Refund Mr K 50% of the second payment, less any funds already recovered and credited back to Mr K.
- Pay 8% simple interest per year on 50% of the second payment, from the date of

loss until the date of settlement (less any tax lawfully deductible). This is to reflect Mr K being deprived of the use of this money. HSBC should send Mr K a tax deduction certificate if he asks for one.

Responses to my provisional decision

First Direct responded and accepted my provisional decision.

Mr K responded and whilst he said he wasn't completely happy at not being refunded all of his money; he accepted my provisional findings.

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 Mr K and First Direct have accepted the findings of my provisional decision, I see no reason to depart from the conclusions I indicated in my provisional decision (which have been copied above), setting out what I was intending to order First Direct to pay. I remain of the view that this complaint should be upheld in part for the reasons set out in my provisional decision.

My final decision

My final decision is that I uphold Mr K's complaint in part. HSBC UK Bank Plc, trading as first direct should:

- Refund Mr K 50% of the second payment, less any funds already recovered and credited back to Mr K.
- Pay 8% simple interest per year on 50% of the second payment, from the date of loss until the date of settlement (less any tax lawfully deductible). This is to reflect Mr K being deprived of the use of this money. HSBC should send Mr K a tax deduction certificate if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 October 2022.

Staci Rowland
Ombudsman