

The complaint

Ms C complains that HSBC UK Bank Plc (trading as “First Direct”) won’t refund money she lost as part of a romance scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again in detail. In brief summary, Ms C fell victim to a romance scam in September 2021 after she met an individual (“the scammer”) on a dating app.

After building up a relationship with the scammer over the course of six weeks, Ms C started to send money to the scammer for various purposes, such as import charges, medical bills and to buy a property. She made several payments totalling £109,000 over the course of two months, which she funded from savings, credit cards and personal loans. Ms C realised she had been scammed after speaking to a friend who contacted the police.

Ms C reported the fraud to First Direct, but it refused to refund the money she had lost as she had authorised the payments. It said it had contacted Ms C in relation to the first scam payment she made of £35,000 on 13 September 2021 and read a scam warning script to her. First Direct said that Ms C confirmed the payment as genuine, so it said it wasn’t liable to refund the money she lost. It also said the payments were not covered by the Contingent Reimbursement Model (CRM Code) as they were international payments.

Our investigator upheld the complaint. She didn’t think First Direct asked enough relevant and probing questions when it spoke to Ms C about the £35,000 payment she was making, and she thought it had missed an opportunity to prevent the scam. However, the investigator also thought that Ms C should share responsibility, so she recommended that First Direct refund 50% of the total loss. First Direct disagreed as it said Ms C didn’t give honest answers so it couldn’t have prevented the scam. As a result, the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator and have decided to uphold it.

First, it isn’t in dispute that Ms C authorised the disputed payments she made to the scammer from her First Direct account. The payments were requested by her using her legitimate security credentials provided by First Direct, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I’ve considered whether First Direct should have done more to prevent Ms C from falling victim to the scam, as there are some situations in which a bank should reasonably

have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

It is common ground that the £35,000 payment Ms C made on 13 September 2021 was unusual given that it did trigger the bank's fraud prevention systems and was automatically blocked pending further enquiry. Accordingly, it's just a question of whether the bank went far *enough* in all the circumstances with that intervention.

When First Direct spoke to Ms C on 13 September 2021, it read through a scam script, which was generic and did not mention anything specifically about romance scams or how they typically operate. So, I don't consider its script to have been sufficient enough to protect Ms C from the nature of the scam she was falling victim to.

When Ms C was asked about the nature of the payment, she gave a vague answer saying she was sending money to a "company that looks after her sister's interests", as she had been given a cover story by the scammer. However, it appears she sounded unsure when saying it was a company she was paying and also said "I think I know what I'm doing". Given the amount of money she was sending, and given the vague and unconfident details she had provided, I don't think this was enough information for First Direct to be satisfied the payment she was making was for genuine reasons and that she was not at risk of financial harm. Ms C also acknowledged on the call that it was not normal for her to send this amount of money from her account.

I appreciate that Ms C did not reveal the true nature of the payment, and that she told First Direct she was not being scammed. But First Direct will have been aware that scammers will often coach their victims as part of a romance scam in what to say to a bank. So, it should not readily accept at face value when someone says they are not being scammed, particularly in circumstances where the cover story is vague and not particularly detailed. And in this instance, I think some further probing would have likely revealed that the reasons Ms C was giving for the payment did not add up and that something wasn't right.

Ms C said she was paying a company, for example, yet was making an international payment to an individual's account. She also originally said the money was for a company to look after her sister, but on later calls for subsequent payments said it was for costs relating to a property she was renovating with her sister. So the reasons she was giving were not consistent. If First Direct had asked for further evidence to support the reasons given for the first payment, or for simple details such as the name of the company and what sort of services it was providing, Ms C has said that she wouldn't have been able to provide plausible or satisfactory answers, or any evidence, and it would have become apparent to First Direct that she was at risk of financial harm.

I also note that Ms C appeared agitated and upset that she hadn't been able to make the payment online, which was another indication I think First Direct should've recognised and acted upon. The bank could have asked questions around whether anyone was asking or pressuring her into making the payment and could have also warned her about the specific risks of romance scams.

Given Ms C was being asked to pay a significant sum of money to a person she had met online only six weeks prior (and whom she had never met in person), I think such a warning would have caused her to pause and question the legitimacy of the scammer. She could have carried out further research into romance scams, or even spoken to a trusted friend (as she did when the scam was revealed) and would have likely discovered that this was what was likely happening to her. In other words, I am satisfied that a sufficient warning to Ms C from her trusted bank would probably have exposed the scammers false pretences and would have prevented any of her losses to the scam. So, I will be directing First Direct to

refund the disputed payments she made as part of the scam.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether Ms C should bear some responsibility by way of contributory negligence, which I'm satisfied she should in this case.

Ms C had been told by the scammer to give a cover story to her bank if she was questioned about the purpose of the payment. But if everything was genuine, there would have been no reason for her to give a different story. I think this ought reasonably to have alerted her to the fact that something wasn't right, but it doesn't appear she acted upon any such concerns. This also made it more difficult for First Direct to uncover the scam when it spoke to her (although I believe it could have still prevented the scam, for the reasons set out above).

Therefore, I'm satisfied that Ms C's actions and failure to question why she was being given a cover story has contributed to her loss, such that she should share responsibility with First Direct, and I'm satisfied a 50% deduction is fair and reasonable in the circumstances.

My final decision

For the reasons given above, I uphold this complaint and direct HSBC UK Bank Plc (trading as First Direct) to Refund 50% of the money Ms C lost to the scam from 13 September 2021 onwards.

First Direct should also pay interest on this amount from the date of each payment to the date of loss, which it can calculate at the following rates:

- For payments funded by savings, pay interest at the savings account rate.
- For payments funded by credit card cash advances, pay interest at the money transfer rate.
- For payments funded by loans, pay the applicable loan interest rate.
- For payments funded by any other means, pay 8% simple interest.

Ms C should provide reasonable evidence to First Direct so it can calculate the correct interest to pay in line with the above direction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 29 October 2023.

Jack Ferris
Ombudsman