

## **The complaint**

Mr F is unhappy with the actions of HSBC UK Bank Plc, trading as first direct ("First Direct"), after he was the victim of a theft while abroad resulting in his wallet and phone being stolen, and his bank card being used for three transactions without his permission.

## **What happened**

The circumstances surrounding this complaint are well known to both parties, so I won't repeat them in great detail here. But broadly summarised, Mr F was abroad on holiday with his partner. Unfortunately, on the second day Mr F had his wallet and phone stolen.

Mr F realised a couple of hours later and contacted First Direct to put a block on his card and to see if there had been any activity on his account.

Mr F was told that there had been three transactions carried out at a fashion retail store for £1,350.44, £1,536.93 and £70.93.

Mr F's card and banking app were blocked and suspended, and Mr F was passed to First Direct's fraud team regarding the transactions.

First Direct's fraud team looked into the matter and, according to its internal system, it showed the disputed transactions in question had all been PIN verified. Mr F was at a loss as to how this had happened as he hadn't used his card, so didn't think someone had seen his PIN and he hadn't written his PIN down or stored it anywhere.

As First Direct's system was showing the transactions as PIN verified – and without a further explanation showing a possible point of compromise regarding the PIN – the adviser declined to refund the transactions.

Mr F was unhappy but left the matter, as he had to go to the police station to report the crime. The Police required proof of the disputed transactions and as Mr F's banking app had been suspended Mr F contacted First Direct the next day seeking assistance with this. Mr F explained to the adviser that he needed evidence of the transactions urgently as he was due to leave the country the next day. Mr F was passed to First Direct's digital team and, in trying to support Mr F gain access to his banking app temporarily, during their discussion it was mentioned by the adviser that possibly a one-time pass code could have been used to verify/authorise the transactions.

Mr F, having raised his unhappiness with the outcome of the fraud claim at the time, and having had a complaint logged about the matter by First Direct, chased for a response upon his return to the UK. Subsequently, in call on 30 November 2022, First Direct's complaint handler identified that the transactions had not been PIN verified and were in fact manually signed for. The confusion had stemmed from the fact First Direct had two systems that it could check to see how a transaction had been processed/authorised.

As Mr F's PIN hadn't been used, First Direct raised a successful fraud claim and ultimately the three disputed transactions were refunded. First Direct apologised for the upset and inconvenience it had caused and paid £100 as compensation.

Mr F, while relieved that his PIN hadn't been compromised, considered that First Direct's actions had caused him to cut his holiday short and return home. Mr F considered that he was left thinking his PIN had been breached, he was being held liable for nearly £4,000 and had been told that as possibly a one-time pass code had been used, his phone was at risk meaning he might be open to cybercrime.

Mr F was also concerned that he had provided the Police with false information – as he had informed them that his PIN had been used. With Mr F saying it had hampered the Police's investigation and, on several occasions, it was suggested that he may have been in collaboration with the fraudsters, due to them knowing the PIN number.

Mr F strongly considered First Direct's actions led to his decision to end his holiday and return home. Mr F therefore considered First Direct should cover the consequential losses he suffered as a result. Mr F sought to claim a compensation amount from First Direct to cover the cost of flights back to the destination to have the holiday he and his partner should have had, an amount to cover various cancellations of trips planned and also an amount to cover the cost he incurred in rescheduling a flight to come home.

First Direct reviewed the matter and while it acknowledged it had made an error, it considered Mr F had made the decision to end his holiday so wasn't liable for the costs he incurred. It also advised that Mr F's card had been stopped so no further fraud could have occurred.

Unhappy with First Direct's response, Mr F referred the matter to our service. One of our Investigators looked into the complaint and upheld it, in part.

In short, they felt First Direct should have known about the alternative system and checked both systems before declining Mr F's claim for fraud. They recognised that Mr F was put through additional unnecessary inconvenience – requiring him to make phone calls – and the misinformation undoubtedly added additional stress. The Investigator recommended that First Direct pay an additional £200 on top of the £100 it had already paid. However they didn't consider First Direct were liable for the costs Mr F was seeking to claim – as they felt the decision to end the holiday and return home was one Mr F had taken and First Direct hadn't said anything to Mr F about returning home.

First Direct accepted the Investigator's opinion. And Mr F disagreed.

So, as the matter hasn't been resolved, it's been passed to me for a final decision.

### **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 uphold this complaint in part. I'll explain why.

Mr F was the victim of a theft of his personal belongings, while abroad. This must have been an awful experience for him and his partner to go through at a time that was meant to be enjoyable.

And in this case, it is clear that First Direct made an error. First Direct should have ensured *all* the relevant systems were checked when declining Mr F's claim for fraud. Mr F clearly states on multiple occasions that he hadn't kept his PIN written down or stored anywhere and hadn't used his card on the holiday, so there wasn't the possibility of 'shoulder-surfing'.

Given the circumstances Mr F found himself in, a victim of theft while abroad, First Direct to my mind should have explored the situation further as it rightly did later on. I certainly agree that this would have prevented some of the unnecessary and additional worry that was caused. And, as Mr F has correctly pointed out, it resulted in him providing incorrect information to the Police at the time.

That said, I don't think it would be fair or reasonable to hold First Direct liable for the actions Mr F subsequently took in deciding to return home or that it is required to cover the costs Mr F is now seeking.

The majority of the impact here to my mind was Mr F falling victim to a theft. This must have been a horrible experience to go through as it also required Mr F to take immediate additional actions to limit/mitigate the potential loss. He had to contact all of his relevant banking providers to get any accounts or cards blocked.

However when Mr F contacted First Direct, I'm mindful his card and banking app were blocked/suspended – and Mr F was aware of this. So no further fraud could occur. And no doubt Mr F carried out the same actions with any other banking providers he had. I think this is an important factor here. While it would have been distressing to have had his phone and wallet stolen – by contacting the necessary banks/providers of those accounts, the risk of further financial harm to Mr F in relation to those accounts had been stopped.

And, in listening to the initial call Mr F had with First Direct when he reported the matter, First Direct enquired as to whether Mr F had enough funds in the meantime. Mr F advised he had, and that his partner had another card so they could cover any expenses.

However, after having his fraud claim declined, with First Direct advising Mr F that the transactions had been carried out by PIN, Mr F – concerned that his PIN had been compromised – took the decision to cancel the rest of the holiday and arrange to fly home.

Subsequently in his call with First Direct the next day, when he was trying to get supporting evidence of the transactions for the Police, Mr F advised that he needed the information urgently as he was due to fly home the next day. During this call Mr F was subsequently passed to First Direct's 'digital team' and advised there was the possibility a one-time passcode could have been sent.

Mr F was further concerned that his phone may have been compromised. And Mr F says because he was concerned that his phone could have been accessed and that he could have been the victim of cybercrime or that his home address could have been known from his phone – he had no option but to return home.

But I also have to consider Mr F had already made the decision to return home having been told that his PIN had been compromised, which was prior to finding out there was a possibility that his phone was compromised when the adviser subsequently mentioned that a one-time pass code could have been used.

And Mr F was also aware from his conversation with First Direct the previous day that it was his physical card that had been used albeit with First Direct's incorrect understanding at the time that it was carried out via PIN.

So, at the time Mr F made the decision to return home, it was seemingly because he was under the belief that his PIN had been compromised somehow – with Mr F not understanding how – and his card had been used with his PIN and his fraud claim had been declined because of it. Given Mr F had taken steps to block his accounts from any further risk of financial harm and had enough funds (through his partner) to carry on with the holiday, I don't think this warranted Mr F having the necessity to return home.

I don't find there to be a persuasive correlation between First Direct's error and Mr F's decision to go home. It's likely this was a decision Mr F took for his own reasons or a combination of reasons rather than solely based on the fact he'd been given incorrect information about the use of his card. To my mind while I appreciate Mr F most likely wanted to sort things out, he reasonably could have remained on holiday and continued to liaise with First Direct on the matter or picked up the issue when he returned from the holiday. And therefore, it would be unreasonable to hold First Direct liable for the costs incurred when Mr F decided to return home.

### Summary

Overall, First Direct provided Mr F with incorrect information at an already distressing time. And it declined to refund Mr F the three transactions in dispute based on that incorrect information. First Direct's offer of £100 compensation doesn't reflect the additional unnecessary distress and inconvenience Mr F suffered by having to make additional phone calls to First Direct and in providing the Police with incorrect information – which to my mind could have been avoided. And I agree that a further £200 (bringing the total compensation to £300) should be paid by First Direct to Mr F.

I'm not satisfied First Direct are liable for the additional compensation/costs Mr F is seeking. I say this because, Mr F's account with First Direct had been protected from the possibility of any further fraud and Mr F, through his partner, seemingly had enough funds to carry on with their holiday. I appreciate the holiday may well have been ruined – given what happened – and I can understand why someone may wish to return home in those circumstances, but I don't think it was ultimately necessary for Mr F to return home – rather it was a decision he made.

### **Putting things right**

I direct First Direct to pay Mr F an additional £200 for the distress and inconvenience caused (on top of the £100 already paid) for the incorrect information it relied on when it declined Mr F's fraud claim.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint in part.

I direct HSBC UK Bank Plc to pay compensation, as set out above, within 28 days of receiving notification of Mr F's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 June 2023.

Matthew Horner  
**Ombudsman**