

The complaint

Mrs O complains that HSBC UK Bank Plc, trading as First Direct, won't refund the money she lost as a result of an investment scam. She's being supported by a representative. To keep things simple, I'll refer to Mrs O throughout this decision.

What happened

The background to this complaint is known to both parties, so I won't repeat all the details here.

In summary, Mrs O says she was introduced to the scammer by her neighbour and that the scammer told her she could make enough money to buy her dream kitchen and replace her car, if she invested in cryptocurrency, as instructed, through a company called Group 500. She says the scammer took control of her computer and guided her through the process of setting up a new sole account with First Direct and a separate account with a cryptocurrency exchange (Payward), through which funds would be sent from her sole account to Group 500. The payments I've considered as part of this complaint are as follows:

	Date	Payee	Amount	Payment details
1	06-Sep-21	Payward	£5,000	Faster payment
2	22-Sep-21	Payward	-£457.70	Withdrawal
3	24-Sep-21	Payward	£10,000	Faster payment

Mrs O says she realised she'd been scammed when she was unable to withdraw funds and was instead being asked to invest more. She reported the scam to First Direct in October 2021. A complaint was raised and later referred to the Financial Ombudsman in December 2022.

Our Investigator reviewed Mrs O's complaint and upheld it. She concluded that the first payment ought to have appeared as suspicious and First Direct should have done more to intervene, but that Mrs O should bear equal responsibility for her losses as she hadn't carried out any due diligence. She recommended a refund of 50% of the total loss with interest on the balance of the first payment at the savings rate from which those funds originated, and at 8% simple on the balance of the second payment. First Direct accepted that outcome, but Mrs O did not. The matter has therefore been passed to me to decide.

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've reached the same conclusions as the Investigator and for the following reasons.

Authorisation

It's common ground Mrs O was the victim of a scam and I'm sorry to hear about the money she's lost. I realise this whole experience has been very upsetting for her. It's also not in dispute that she authorised the payments she made to Payward (before they were sent to the scammer) and, in general, the starting position is that she's presumed liable for those losses in the first instance. That is the case even though I fully appreciate Mrs O had no intention of sending her money to a scammer.

Intervention

There are, however, some situations where I consider that a bank, taking into account relevant rules, codes and best practice, should reasonably have taken a closer look at the circumstances of a payment if, for example, it's particularly out of character.

In this respect, I note that the first payment of £5,000 was unusual enough to have triggered an alert at First Direct and a text message was sent to Mrs O asking for confirmation that the payment was genuine. I've seen insufficient evidence to conclude that a call also took place at that point. But, on balance, given that this was a large payment from a newly opened account, which was drained to send money to a cryptocurrency exchange for the purpose of '*paying bills*', I don't consider a text message alone to have been proportionate in light of the unusual and suspicious circumstances, which ought to have reasonably indicated that Mrs O was at risk of financial harm. Therefore, I think that First Direct should have intervened more effectively and spoken to Mrs O directly about the nature of that transaction.

I also consider that if First Direct had spoken to Mrs O and asked probing questions about the circumstances of the payment, then it's likely the scam would have been unravelled. I think Mrs O would have likely listened to a warning from her bank about what her situation looked like – and, on balance, I think that off the back of some research into Group 500 and scams in general, she'd have seen that something wasn't quite right, she'd have recognised she was at risk – and neither of the payments would have subsequently been made.

I can see, for example, that a warning from the Financial Conduct Authority (FCA) had been published at the time to say Group 500 was '*targeting people in the UK*' and that there was a lack of protection on the basis of it being unauthorised. There were also negative reviews on Trustpilot of others who'd been scammed, describing similar experiences as the one Mrs O went through. As a result, I'm satisfied that First Direct's failure to intervene has caused Mrs O's loss here, such that it would be fair and reasonable for it to refund the payments.

Contributory negligence

The concept of 'contributory negligence' centres around whether a consumer should have done something to mitigate their losses or should share some responsibility for them.

I've thought carefully about Mrs O's comments that she was introduced to the scammer by her friend (and neighbour) whom she trusted and whose investment had '*tripled*' in previous months. I appreciate she may have found the prospect of significant returns appealing, that the scammer was convincing, and that the payment she received on 22 September 2021 reassured her the investment was genuine. But I think it's also fair to say that Mrs O was sending a significant amount of money to someone she'd never met, whom her neighbour had found on social media, and to a company she knew little about. In the circumstances, and given the sums involved, I'd reasonably have expected Mrs O to carry out some of her own due diligence into the investment and, on balance, I'm not persuaded that she did.

I've already mentioned above that if Mrs O had carried out a search for Group 500 she'd have likely seen the warning from the FCA and the negative reviews on Trustpilot. In my

view, and even if some positive reviews may have since been deleted, there was still enough information readily available at the time which should have alerted Mrs O as to the legitimacy of the investment. I agree therefore that she should reasonably share equal responsibility for her losses in these circumstances.

Post-scam events

The scam was reported to First Direct in October 2021 and, given the money had been sent to Mrs O's own Payward account and then used to buy cryptocurrency, there was very little First Direct could have done to facilitate the recovery of the funds by that time.

But I agree that the calls Mrs O made to First Direct to report the scam, both in 2021 and 2022, should have been better handled. In the first call, Mrs O explained she'd been scammed and asked if she should speak to the fraud team. In response, she was told that the matter couldn't be treated as a scam and she needed to contact the Citizens Advice Bureau instead. In the second call, Mrs O once again explained she wanted to speak to the fraud team to report a scam. It's disappointing First Direct again failed to take this forward.

Before issuing this decision, I let both parties to the complaint know that I intended to award £150 to Mrs O for the poor service she received from First Direct when she tried to report the scam and for the additional distress and inconvenience this caused. First Direct responded to say it would agree to make that payment. Mrs O hasn't replied. In the circumstances, I see no reason to change the award of compensation.

My final decision

For the reasons I've explained, I uphold the complaint and I direct HSBC UK Bank Plc, trading as First Direct, to:

- Pay Mrs O, 50% of the total loss, taking into account the credit she received.
- Pay Mrs O, interest on the balance of the first payment at the savings rate of the account from which that payment originated, and 8% simple interest on the balance of the second payment. Interest should be calculated from the date of payments to the date of settlement (if HSBC deducts tax from this interest, it should provide Mrs O with the appropriate tax deduction certificate).
- Pay Mrs O, £150 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 16 November 2023.

Thomas Cardia
Ombudsman