

The complaint

Mr K complains that HSBC UK Bank Plc, trading as first direct ("first direct") won't refund him the money he's lost after he fell victim to a scam.

What happened

Mr K was expecting to complete a purchase of a property. He told us the aimed completion date was 1 August 2022.

On 19 July 2022, Mr K received an email from whom he believed to be his solicitor asking him to make a deposit payment. Unknown to Mr K at the time, there had been a breach in his solicitor's data security. As a result, Mr K, unfortunately received emails from fraudsters who were impersonating his solicitors.

Mr K made a payment of £12,588 on 19 July 2022 to an account belonging to the fraudsters. Mr K received an email from the solicitors to advise of a data breach and following this he called the solicitor. It was at this point, Mr K realised he'd fallen victim to a scam.

Mr K reported the scam to first direct on 21 July 2022. 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 authorised push payment (APP) scams like this in all but a limited number of circumstances.

first direct assessed what had happened against the provisions of the CRM Code. It said sufficient fraud warnings were in place when Mr K sent the payment and it considered Mr K was liable for the money he'd lost as it felt he could have taken more caution and carried out further checks before sending the payment. first direct say it contacted the beneficiary bank (the bank to which the payment was made) but no funds remained.

Unhappy with first direct's response Mr K referred the complaint to this service. Mr K accepted he could've done things differently with the benefit of hindsight but felt first direct hadn't done enough to protect him.

An Investigator looked into Mr K's complaint and upheld it. Overall, she felt Mr K had fallen victim to a sophisticated scam, hadn't acted without a reasonable basis for belief and hadn't ignored an Effective Warning (as she concluded first direct hadn't provided one).

first direct didn't agree with the Investigator's view and provided a detailed response which I've summarised below:

- It maintains that the warning Mr K saw when making the payment was an effective warning under the CRM Code. It adds that initial sentences of the warning clearly advised Mr K to take care, advised emails can be intercepted and told him to check the payment details with the solicitor in person or by phone.
- first direct added that the warning also stated customers could visit its fraud centre and a link was provided to the further guidance before proceeding.

- first direct say there were clear red flags within the email communication, such as, grammatical and spelling errors which you'd not expect from an official solicitor. It also considered the request for a deposit increase ought to have been a red flag and that the calculation of the requested amount was wrong.

The investigator explained why she was still of the view the complaint should be upheld.

As an agreement hasn't been reached the complaint has 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is at the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Having carefully considered everything I've seen and been told, I'm satisfied that:

- Under the terms of the CRM Code, first direct should have refunded the money Mr K lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- I'm also satisfied, for reasons I'll explain later in this decision, first direct should pay Mr K 8% simple interest from the date the bank declined the payment under the CRM Code to the date of settlement.

As I've said above, the CRM Code requires payment service providers to reimburse customers who have been the victims of authorised push payment (APP) scams, in all but limited circumstances. If first direct declines to reimburse its customer in full, it is for first direct to establish that one, or more, of the listed exceptions set out in the CRM Code itself.

Those exceptions are:

- where in all the circumstances, the customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay, the payment was for genuine goods or services, and/or that the person or business with whom they transacted with was legitimate; or
- the customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning.

There are further exceptions within the CRM, but none of these are applicable here.

When assessing whether it can establish these things, a Firm must consider whether they would have had a 'material effect on preventing the APP scam'.

After having carefully considered all of first direct's submissions, I'm satisfied that it has not shown that Mr K made the payment without a reasonable basis for believing that he was making a payment to his solicitor or that he ignored an effective scam warning. I will go on to explain why I have reached this finding.

Did Mr K have a reasonable basis for belief when making the payment?

I've thought about whether in all the circumstances of the payment, in particular the characteristics of Mr K and the complexity and sophistication of the scam, Mr K made the payment without a reasonable basis for believing the payment was legitimate.

Mr K fell victim to a classic email intercept scam – typically sophisticated and hard to detect. Mr K has explained that the aimed completion date for the property he was looking to buy was the beginning of August 2022. When reporting the scam to first direct, Mr K commented in this call that it had been a number of years since he'd bought a property but that he recalled he'd paid a deposit then. I don't find the fraudsters email requesting a deposit, which for all intents and purposes was well timed to when Mr K was expecting to complete on the property purchase would have been unexpected. I find this is further supported by Mr K's comments in the scam reporting call with first direct where he said the request for the deposit payment didn't seem out of the ordinary given his previous experience.

Here the fraudster's email address was identical to that of the genuine solicitor and so there was nothing to alert Mr K to the fact he was dealing with someone other than his solicitor.

first direct says there were clear red flags within the emails Mr K received – namely, grammatical and spelling errors which it says you'd not expect to be in official solicitor emails. I don't agree. People don't want or expect to be scammed as they are going about their daily business. I note within the reporting call with first direct Mr K, with the benefit of hindsight, may have commented about the language of the emails he received. But I'm not persuaded that any oddities within the emails were so apparent that it ought to have raised flags that Mr K was at risk of a scam. The emails came from the same email address as Mr K's solicitor, so I consider it reasonable Mr K was convinced he was liaising with his solicitor. Even if I consider that Mr K did miss an opportunity to check the details were genuine with the solicitor, I'm satisfied this is because Mr K, at the time, was under the spell that he was liaising with his solicitor.

first direct has provided further comments about the emails requesting a deposit increase and the calculations of the amounts quoted not being correct. It considers this ought to have made Mr K stop and think. I don't find this point changes my conclusions. I say this because these emails came after Mr K had made the payment of £12,588. I acknowledge he received further emails telling him that he couldn't proceed with a 10% deposit and that he was asked to make a further payment, but he didn't do so. The red flags first direct refers to in relation to this specific point came after the payment had been sent, and so I don't find they ought to have raised concern with Mr K that he was at risk of a scam or that this ought to have fairly and reasonably impacted his basis for belief when making the payment – as this came after the payment in question.

Mr K questioned, by email, the payment details he was given with whom he believed at the time was his solicitor. The fraudsters replied to Mr K explaining that the account details provided was for a client care account that it used to receive payments when it has fund lodgement issues with its client account. On balance, I'm not persuaded the response Mr K received, which was received promptly following his enquiry, ought to have caused him concern. I've reached this finding, when thinking about the response Mr K received, alongside other factors present at the time, such as, the email address being identical to the genuine email address for his solicitor, the signature within the emails showed the correct

contact details, (albeit it's likely the name of the staff member on the email wasn't genuine/correct), and that the correct property address was referred to. In addition, when making the payment Mr K received a confirmation of payee match.

With all the above in mind, I'm not persuaded that Mr K ought to have been more sceptical of the situation. I'm satisfied Mr K fell victim to a sophisticated scam.

Did Mr K ignore an effective warning?

first direct say Mr K chose the payment purpose as 'Making a large purchase' and was provided with a warning. In this case I'm satisfied that the requirements of the effective warning exception were not met.

I do note first direct's strength of feelings about the warning it says Mr K saw when making the payment and, why it maintains this was an 'effective warning' under the CRM Code.

In summary, but not limited to, first direct has highlighted that the start of the warning says '*fraudsters can intercept emails or invoices and alter account details*'. It adds that the warning says to '*double check where you are sending the money to by contacting the seller or solicitor in person or using a trusted number*'. It accepted the remainder of the warning which went on to highlight safe account scams wasn't relevant but maintains that the start of the warning was.

I've thought carefully about what first direct has said on this point, but here, Mr K thought he was liaising with his genuine solicitor (albeit it was a fraudster), so I don't think this would have made Mr K pause for thought. The warning, in my view, doesn't bring to life the most common feature of this type of scam and what this might feel like. Whilst it does say fraudsters can intercept emails or invoices it doesn't bring this to life – that is, that the fraudster is able to convincingly impersonate a recognised contact by email (such as a client, solicitor or tradesman), by intercepting a chain of emails, or sending an email from an email address which is the same as, or almost identical to, the genuine email address.

Mr K says he wasn't aware emails could be intercepted and, in this case, it later become known that there was a data breach at his genuine solicitor's. Here, Mr K received an email from an email address which was the same as the genuine email address.

I accept the warning sets out that Mr K should contact the seller or his solicitor in person or using a number he trusts. But Mr K was abroad, in a different time zone, at the time he received the intercepted email. I also note when Mr K reported the scam with first direct he informed the agent that while he had spoken by phone once or twice with the solicitor he communicated mainly by email. Having thought carefully, I'm not persuaded this part of the warning would have hit home to the average consumer when they already think they're liaising with their solicitor – when, as I've said, the warning didn't explain what email interception looked like in reality. I also don't think Mr K was given sufficient information to understand why speaking directly to his solicitor was so important to preventing a loss to this type of scam.

While I recognise first direct feels strongly that it provided an effective warning which met the criteria in SF1(2), overall, I don't think the warning it provided was sufficiently specific or impactful to break the spell of the type of scam Mr K fell victim to. In turn, I can understand why Mr K, when liaising with whom he believed to be his solicitor, who was using an identical email address and in my view, with no other obvious red flags to the communication, would move past it.

Could first direct have done anything else to prevent the scam?

Finally, I've thought about whether, moving away from the CRM Code, first direct could've done anything else to prevent Mr K falling victim to the scam.

In this particular case, I don't find the payment Mr K made was so unusual or remarkable in appearance in comparison to previous account activity that it ought to have prompted first direct to have made enquiries to challenge the purpose of the payment before processing it.

The relevance of this finding impacts the interest award I make. As I don't find the payment ought to have put first direct on notice that Mr K might be at risk of financial harm from fraud and so, I don't think it ought to have made enquiries before allowing it to be processed, I find first direct should pay Mr K interest on the redress that is payable as a result of it falling short in its obligations, from the date it decided not to refund him under the CRM Code.

Conclusions

For the reasons I've set out above, I'm satisfied first direct should have reimbursed Mr K under the provisions of the CRM Code. I'm not satisfied first direct established Mr K ignored an effective warning or that he made the payment without a reasonable basis for belief that he was paying his solicitor.

Putting things right

I uphold Mr K's complaint against HSBC UK Bank Plc, trading as first direct and instruct it to:

- Refund Mr K the money he's lost to the scam, being £12,588 and;
- Pay interest at 8% simple per annum on that amount, from the date the bank decided not to refund Mr K under the CRM Code until the date of settlement*.

* If first direct considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so Mr K can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc, trading as first direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 September 2023.

Staci Rowland
Ombudsman