

## The complaint

Mr E has complained that HSBC UK Bank Plc (trading as first direct) won't refund the money he lost after falling victim to a scam.

## What happened

Mr E was invited to a group on an instant messaging app. It focused on investments, run by someone who claimed to be affiliated with an established financial information website. People in the group left positive comments. This person turned out to be a scammer.

After observing the group for some time, Mr E felt it was legitimate. He was persuaded to invest in a cryptocurrency after reading a white paper and being offered returns of around 100%. He was also told he had to pay for tax and commission up front before he could withdraw his gains. Starting in late 2022, Mr E transferred money from his First Direct account to a crypto wallet of his, then on from his crypto wallet to the scammer. He sent £12,500 in total.

The messaging group and the scammer's platform disappeared. Mr E reported the matter to First Direct.

First Direct didn't think it was liable for Mr E's loss. It pointed out that it gave him a warning and intervened with a phone call, but Mr E wanted to go ahead. And he had paid the money to another account in his own name.

Our investigator looked into things independently and upheld the complaint. First Direct didn't agree, so the complaint's been passed to me to decide.

I sent Mr E and First Direct a provisional decision on 26 September 2023, to explain why I thought the complaint should be partially upheld. In that decision, I said:

*There's no dispute that Mr E authorised the payments, even if he didn't intend for the money to go to scammers. So, under the Payment Services Regulations and the terms of his account, Mr E is liable for the loss in the first instance. But the matter doesn't end there.*

*Taking into account the law, regulator's rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, I consider that First Direct should have fairly and reasonably:*

- *Monitored accounts and payments to counter risks such as fraud and scams;*
- *Had systems in place to look out for particularly unusual transactions or other signs its customers were at risk of fraud;*

- *In some circumstances, taken further steps or made further checks before a payment went out, or even blocked it, to help protect customers – irrespective of the type of payment involved.*

*I've reviewed Mr E's account activity in the months leading up to the scam, and I think the payments involved stand out. While he'd made a few large payments before, his first two payments to the crypto platform were his largest by a fair way. The money went to a new payee with no confirmation of payee, which was a cryptocurrency platform. And he doesn't appear to have paid for crypto before. By 2022, the Financial Conduct Authority (FCA) and Action Fraud had published warnings about crypto scams, so First Direct should've had a good understanding of the risk of these scams and how they work. And I can see that First Direct also had concerns about these payments.*

*So I think First Direct ought reasonably to have made person-to-person enquiries with Mr E from the very first payment, before it processed it.*

*I can see that First Direct gave Mr E a warning message at the first payment, and spoke to him on the phone about the second. And I'm glad that it made some efforts to intervene. However, the warning it gave was mostly not relevant to this type of scam and didn't go into enough detail to be effective. And its phone call focused on whether Mr E was sure he'd paid the right account details and that he knew who the beneficiary was.*

*Had First Direct asked reasonable questions about things like what had prompted Mr E to make the payment and how he'd found out about the investment, I think it would've most likely come to light that he was being scammed. For example, he'd been cold-contacted on an app by an unregulated individual falsely claiming to work for a popular website, he'd been promised wholly unrealistic returns, he'd done no due diligence and received no proper paperwork, he'd been asked for up-front payments before being able to make withdrawals, and so on. Given the circumstances of the payment, the relative prominence of this type of scam, and the intelligence First Direct had got about crypto scams from the regulator and Action Fraud, I'm satisfied it ought to have identified this was most likely a scam and warned Mr E or stopped the payments altogether.*

*I've found no good reason to think Mr E would not have been honest with First Direct about why he was sending this payment. He told them up-front that it was for an investment, he thought it was genuine, and the scammers had not told him to lie if questioned. I've also seen no reason why Mr E would not have listened to First Direct – it is a well-known name in banking, and he accepted he was not a particularly experienced cryptocurrency investor.*

*First Direct argued that it shouldn't be held liable for the loss because the transfers were to a receiving account in Mr E's name, and I understand its thinking. However, First Direct was still obliged to look out for potentially fraudulent payments, even if they were going to another account in the customer's name. And identifying and preventing such scam payments would still have the effect of preventing a loss to its customer. So First Direct can still be held liable for a loss which resulted from a failure on its part to sufficiently intervene.*

*So based on what I've seen so far, I think First Direct bears some liability for Mr E's losses.*

*I've also thought carefully about Mr E's role in what happened. I understand that Mr E waited before getting involved, read a white paper, and saw other people in the group post positive comments. But I'm afraid I can't see that Mr E carried out any reasonable checks or due diligence before paying the scammers. A quick search would've shown that the individual running the group had lied about working with the financial information website, and that he was not regulated. I can also see there were negative warnings and reviews about this person posted online in the months before Mr E began to invest. The returns on offer were concerningly unrealistic. Further, Mr E had been cold-contacted via an app, he hadn't received any proper paperwork, and so on. I'm afraid I think that Mr E ought to have had more concerns along the way about what he was being advised to do.*

*So I can't fairly hold First Direct solely responsible for Mr E's losses. I currently think Mr E should also bear some responsibility. In this case, I think the fairest thing is for each side to be held liable for 50% of the loss. I also think First Direct should pay some simple interest on its share of the loss, to compensate Mr E for the time he was without that money.*

*I've also considered whether First Direct should have done more to try to recover Mr E's money. But as the transfers went to his own crypto account, and the funds had then been spent, I'm afraid there wasn't anything more that First Direct could really do there.*

*Lastly, I've thought carefully about the stress and upset which Mr E suffered here. I certainly empathise with the considerable stress he was caused by the scam. But I think it was the scammers, rather than First Direct, who are really responsible for Mr E's distress here. And from listening to Mr E's calls with First Direct, it can see it handled things sensitively. So I don't plan to tell First Direct to pay further compensation.*

I said I'd consider anything else anyone wanted to give me. Both sides let me know they had nothing further to add.

### **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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

### **Putting things right**

I direct HSBC UK Bank Plc (trading as first direct) to:

- Refund 50% of the payments involved, totalling £6,250;
- Pay 8% simple interest per year on its half of each payment, calculated from the date of each payment to the date of settlement.

If First Direct considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell Mr E how much tax it's taken off. It should also give Mr E a tax deduction certificate if he asks for one. Mr E may be able to reclaim the tax from HMRC if he doesn't normally pay tax.

**My final decision**

I uphold Mr E's complaint in part, and direct HSBC UK Bank Plc to put things right in the way I set out above.

If Mr E accepts the final decision, HSBC UK Bank Plc must carry out the redress within 28 days of the date our service notifies it of the acceptance.

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

Adam Charles  
**Ombudsman**