DRN-4526873

The complaint

Mrs B complains that HSBC UK Bank Plc (trading as "First Direct") won't refund over £20,000 she lost to a cryptocurrency investment scam.

The details of this complaint are well known to both parties, so I won't repeat everything again here. Instead, I will focus on giving the reasons for my 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 agree with the conclusions reached by the investigator and have decided not to uphold it for the following reasons:

- It isn't in dispute that Mrs B has fallen victim to a cruel scam here, nor that she authorised the disputed payments she made to her own E-money account from her First Direct account (where her funds were subsequently transferred on to the scammer through cryptocurrency). The transfers were requested by Mrs B 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 Mrs B 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 unusual or out of character.

- When Mrs B made the first scam payment of £3,860 to her E-money account on 24 April 2023, she had to provide First Direct with a reason for the transaction, to which she said 'Buying goods and services', to which she was then provided with an in-app scam warning relevant to the option she chose. And given the relatively low-risk value of the payment being made, along with the fact that First Direct would've seen it was going to another account in her own name, I think this was a proportionate step for the bank to take to protect her from the risk of being scammed, so I don't consider it ought to have made any further enquiries at that point.

- However, Mrs B then went on to make two much larger payments, the second being for £7,085 on 26 April 2023, and then an even larger payment of £10,000 just two days after. It's arguable that the second payment ought to have given First Direct cause for concern. But certainly by the £10,000 transaction, I think First Direct ought reasonably to have automatically blocked the payment until it had spoken to Mrs B and made further enquiries. I say this because multiple payments being made to the same account that are increasingly escalating in value can often be indicative of someone who is at high risk of financial harm. So I do think First Direct could have done more to protect Mrs B in these circumstances. But even if it had intervened and questioned her further, I'm not persuaded this would have ultimately revealed the scam or prevented her loss in any

event, I'll explain why.

- As part of the same scam, Mrs B was also transferring money from another account she held with a different firm ("R"), who questioned her about the payments she was making on 28 April 2023. R asked Mrs B what the payment was for, to which she said she was buying USDT so she could buy small amounts of cryptocurrency on Binance. However, this wasn't entirely accurate as Mrs B was actually under the impression she was paying fees in order to avoid an FCA fine, but she didn't disclose this.

- Mrs B was further asked by R whether she was being pressured by anyone to act quickly or at risk of missing out on an investment opportunity. She was also asked whether she had been contacted or was being encouraged to invest by someone she didn't know or had met online recently. However, despite being pressured to act quickly, and despite the fact that she was being encouraged to invest by someone she didn't know and had only met online, Mrs B didn't disclose any of this to R and answered 'No' to all of these questions. So, it's clear Mrs B was not providing upfront and honest answers in response to R's questions. I appreciate she may have been coached by the scammer to lie to the bank, although Mrs B has said she wasn't given a cover story. But there appears to be no other plausible reason why she would've given misleading answers to her bank when questioned about the payments.

- As a result, even if First Direct had made further enquiries and spoken to Mrs B about the payments she was making, I'm not persuaded this would have likely revealed that she was at risk of financial harm, as it seems more likely than not that she would have also given misleading answers in the same way she had in response to R's questions. Indeed, Mrs B didn't specify to First Direct that she was investing when it asked her to provide a reason for the first payment, despite there being the option to do so, as she instead choose 'Buying goods and services'. Mrs B said she chose this option out of habit, but when viewed in the context of the misleading answers she provided to her other bank, I think it's more likely than not that she was aware she was providing incorrect answers in order to facilitate the payments going through without being blocked.

- I also don't think there was anything more First Direct could've done to recover the money Mrs B lost after she reported the scam. We know that the money she transferred to her E-money account was swiftly transferred out and on to her cryptocurrency wallet, so there would've been no prospect of First Direct recovering any funds from the receiving account in these circumstances.

I appreciate this will likely come as a disappointment to Mrs B, and I'm sorry to hear she has been the victim of a cruel scam. However, I'm not persuaded First Direct can fairly or reasonably be held liable for her loss in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 25 June 2024.

Jack Ferris
Ombudsman