

The complaint

Mr M complains that HSBC UK Bank Plc (trading as first direct) won't refund the money he lost when he fell victim to a scam.

What happened

In late 2021, Mr M saw a video on his phone showing investments being discussed on a well-known television show. This prompted him to look for a trading platform and he came across 'F'. He says they had a professional-looking website and he was impressed by their contact. He looked them up and didn't find any negative reviews, so decided to invest.

Mr M was prompted to download remote access software so F could guide him on what to do. He was instructed to open an account with a cryptocurrency exchange (C) and send funds there from his first direct account – in order to convert them into cryptocurrency and send on to F's trading platform.

First direct questioned Mr M about a £1,500 payment he sent to C, which he explained he would be sending on to F. It directed him complete further research into F before deciding whether to proceed. He called back later that day and asked to go ahead, explaining he had been able to make a withdrawal from C in the meantime.

After sending further payments in November and December 2021, Mr M says the value of his trading platform dropped from around \$18,000 to under \$2,000. F persuaded him to agree to take out a £15,100 loan, in the hope of rebuilding his investment then withdrawing his money. When he asked to liquidate his account, they told him he would receive almost \$66,000 – but only upon payment of around \$5,000 in fees.

Suspicious about the significant increase in the liquidation figure, and the request for more payments, Mr M realised he had been scammed and reported this to first direct. He says it told him it couldn't assist as the payments had been sent to other accounts he held (rather than directly to F).

Mr M then complained, via a professional representative, that first direct hadn't done enough to protect him when he made the payments. As it didn't agree to refund him, he referred his complaint to our service. Looking at what Mr M has reported, and his statements, these are the payments I understand he says are connected to the scam:

| Payment number | Date | Amount | Recipient/Merchant | Payment type |
|----------------|------------|---------|-----------------------------|--------------------|
| One | 20/10/2021 | £10 | C | Bill payment |
| Two | 25/10/2021 | £194.98 | 'R' - merchant type unclear | Debit card payment |
| Three | 26/10/2021 | £1,500 | C | Bill payment |

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|-------|------------|---------|-----------------------------|---------------------|
| - | 26/10/2021 | £16.91 | C | Credit |
| - | 01/11/2021 | £27.39 | C | Credit |
| Four | 02/11/2021 | £1,000 | C | Bill payment |
| Five | 11/11/2021 | £184.88 | 'T' - merchant type unclear | Credit card payment |
| Six | 11/11/2021 | £186.58 | 'B' - merchant type unclear | Credit card payment |
| - | 22/11/2022 | £70 | C | Credit |
| - | 09/12/2021 | £359.95 | C | Credit |
| Seven | 17/12/2021 | £500 | C | Bill payment |
| Eight | 30/12/2021 | £2,500 | C | Bill payment |
| Nine | 10/01/2022 | £15,100 | C | Bill payment |

Based on the invoice Mr M gave first direct when reporting the scam, these were the payments made into his account with F during this time:

| Date | Unit price |
|------------|-------------|
| 26/10/2021 | \$2,011.42 |
| 02/11/2021 | \$1,325.56 |
| 20/12/2021 | \$639.00 |
| 10/01/2022 | \$20,026.10 |

Our investigator upheld the complaint. She didn't think first direct had cause to be suspicious about the first two payments. But it did flag the third payment due to fraud concerns. She didn't think it had done enough to protect Mr M – so recommended it should refund his fraudulent losses from that point.

First direct appealed the investigator's outcome, so the case was passed to me. It provided recordings of its calls with Mr M about the £1,500 scam payment. It argued these showed he behaved recklessly in proceeding despite its warnings to conduct further research.

I issued my provisional decision earlier this month explaining I was minded to uphold the complaint – but to make a different award to that proposed by our investigator. Rather than refunding Mr M from payment three, I thought first direct should refund 50% of payment nine.

I invited both parties to provide any further comments or evidence. Both parties have responded to confirm they will accept my findings and have nothing further to add. I'm therefore proceeding to issue my 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.

As both parties agree with my provisional findings, I see no reason to depart from them. I'm therefore upholding this complaint for the reasons I gave in my provisional decision, and which I'll set out again here.

It's accepted that Mr M made these payments, even if he did so under false inducement by F. That is relevant as, in line with the relevant regulations (the Payment Services Regulations 2017 – 'PSRs'), he is generally liable for payments he authorises.

However, there are circumstances when it might be appropriate for first direct to take additional steps before processing a payment. Such as when there are grounds to suspect the payment presented a fraud risk. That might occur when a payment is significantly unusual or uncharacteristic compared to the normal use of the account. And/or if the account activity fits a known pattern of fraud.

I agree with the investigator that the first two payments didn't present a clear fraud risk. But we know first direct did have concerns about payment three, as it paused the payment in order to speak to Mr M about what he was doing. I've therefore considered whether it did enough – and, if not, whether appropriate intervention at this point would have prevented any further losses to the scam.

Key to this, I've listened to the call recordings from 26 October 2021. First direct explained the £1,500 payment to C was being held due to a fraud/scam alert, and asked Mr M why he was making it. He explained he was trying to do online trading and had been told he needed to set up a cryptocurrency account in order to do this. He named F as the company he was dealing with, and asked if there was a problem with them.

First direct explained it was seeing investment scams, such as where companies were offering returns that were too good to be true. They asked Mr M whether he had got independent advice, or whether he had checked with the Financial Conduct Authority (FCA) that F were a legitimate company. Mr M confirmed he hadn't.

First direct suggested he should do more research to decide if he was sure about F. Mr M replied that he was a bit sceptical but was okay to lose the money. He also confirmed he hadn't had any contact problems with F, and said their site was working and seemed to match what was happening in the markets. First direct said it would put the payment through if he was electing not to do more research. But cautioned it seemed "very suspicious" and it would still suggest putting the payment on hold until he did more research – which Mr M ultimately agreed to do.

Mr M called back later that day and instructed first direct to release the payment. He said it was a "bit of a gamble", but that you need to "speculate to accumulate". He said "you may be able to call me a fool in a month", but he wanted to proceed. He confirmed the payment purpose was trading, and said it was like gambling to him – he was "happy to lose" the money if it went wrong. He also said he had made a withdrawal from C's platform, and that had worked fine. It therefore appears the credit of £16.91 that day stems from the £10 he paid them on 20 October 2021; it doesn't appear this payment was ever sent on to F's platform.

I do agree with the investigator that there is more first direct could, and arguably ought to, have questioned Mr M about – given it had fraud concerns, and knew he was sending funds via a cryptocurrency exchange to send on to another trading platform. For example, it could have asked whether Mr M had been asked to set up remote access with F – which he had, and which I'd expect it to know commonly occurs in these types of scams. As first direct didn't ask about this, it missed an opportunity to tell him this was a warning sign F might be operating fraudulently.

That said, I am also conscious that first direct did make Mr M aware it thought the set-up seemed "highly suspicious". And it advised him to do further research and/or get independent advice. Given he called back within one hour and said he wanted to proceed, it doesn't appear to me that he was open to these warnings from first direct.

While Mr M did check that he could make a withdrawal, he only did so from C's platform rather than from F. Based on the invoice he provided, it doesn't appear he had deposited any funds with them yet. So I don't think the withdrawal reasonably ought to have reassured him that he would be able to withdraw from F's platform. In fact, during the call, Mr M even mentioned that while he'd been able to withdraw from C, "as for the share company [F]... well they might be off to the casino for all I know".

The overall impression I form from Mr M's contact with first direct at this point is that he did have awareness that F might be operating a scam. He refers to it as a gamble, and said he was willing to lose the money if it went wrong. He made comments which indicate he was alive to the risk F might not be operating honestly – and that was a risk he was willing to take.

While first direct's questioning and warnings could have gone further, I'm not persuaded there is more it ought to have done at that point which would have prevented Mr M from proceeding. It seems Mr M was happy to take the risk in the hope it would turn out to be legitimate and earn him lots of money, as he mentioned in the call he had seen others do.

I therefore don't consider it fair to expect first direct to reimburse Mr M from this point. And given it had intervened with this payment, and he had decided to proceed, I don't think it had cause to be concerned about payments four to eight either.

The further payments Mr M made to C were spaced out and for similar amounts. The credit card payments were made from a different account, and weren't for a concerning amount.

It's also not clear to me how/whether the credit card payments are connected to the scam. I note first direct requested further information about these payments when Mr M first raised his dispute. Looking at the records he provided in response, I note the email exchange he provided with F post-dates the payments he is disputing. And the invoice for F doesn't show credits on to the platform that I can connect to the amounts or timings of these payments.

However, the invoice does suggest payment nine was lost to the scam. And I do think first direct ought to have been concerned about this payment. I do appreciate C was an established payee by this point, But the payment amount was a very large increase compared to previous payments he had sent them – at £15,100, compared to the next highest payment of £2,000.

More widely, the payment was out of keeping with how Mr M usually transacted. The most he had transferred in one payment, in the year prior to the scam, was £6,800. So £15,100 looked uncharacteristic. That, coupled with the fact the payment was funded by a loan taken out immediately prior, to a recipient Mr M had previously told first direct was linked to a cryptocurrency-related investment, leads me to conclude first direct ought to have been suspicious about this payment. And that it should therefore have paused it – in order to speak to Mr M about what he was doing, and warn him of the risks.

At the point of this payment, Mr M was in a very different situation compared to his call with first direct in October 2021. It appears F were using social engineering tactics to induce him to act quickly, having built up trust by showing winnings on their platform previously, and having allowed some small withdrawals. They then causing panic by showing significant losses, in order to persuade him to send more funds in a bid to recover the loss. I don't think he was acting without regard to the risks at that point – meaning there was a better opportunity for first direct to have successfully dissuaded him from proceeding.

Given the level of control F appeared to have been exerting at this point, I have considered the possibility that, if first direct had asked what he was doing, F would have coached him on what to say. However, I do place weight on the fact Mr M was very forthcoming about what he was doing when he spoke to first direct previously.

I'm also mindful first direct's prior contact meant it was on notice Mr M was using the recipient account to send funds to an investment platform. So, even if he had provided a cover story (which I've seen no firm evidence to suggest he would have), I think first direct should still have been alive to the risk Mr M might be using borrowed money for what it had previously deemed a "suspicious" investment. So it ought to have been in a position to 'see through' a cover story – and to warn Mr M appropriately about the risks.

I think an interruption to the pressure tactics being employed by F at this point would likely have succeeded. Questioning Mr M about what he was doing, as well as issuing relevant warnings about how and why this sounded like a scam (including factors that I would have expected first direct to have been aware of, which may not have been so obvious to Mr M – such as the use by scammers of fake software which appears to show live trades), would have created an opportunity for Mr M to think and reflect on what he was doing. Given the concerns he had, I think first direct would have been able to persuade him that sending further funds was unlikely to recover the money he appeared to have lost, and that the scenario bore the hallmarks of a scam.

I therefore consider it fair to hold first direct liable for the fraudulent loss Mr M incurred from this point. But I also consider it fair to expect him to share liability for what happened. While he is a layperson, who is less familiar than first direct with the hallmarks of these types of scams – I do think there were warning signs he ought to have picked up on, but overlooked, which contributed to the loss he incurred.

Mr M was clearly aware of the risks involved when he made the earlier scam payments. And it was only by 'investing' these amounts that the scammers were able to create a scenario to induce him to send this final payment. So, his failure to consider the risks at this earlier point contributed to the overall losses he incurred.

Furthermore, I do also consider it relevant that Mr M took out a loan to fund the transaction. While I appreciate the scammers used sophisticated tactics to persuade him to do this, he was induced to make the payment due to (allegedly) losing money on F's trading platform. I think that ought to have alerted him that, even if the investment was genuine, he risked losing more money. Meaning it wasn't an appropriate use of the funds he had borrowed – as there was a clear risk he wouldn't be able to repay them.

Overall, I consider it fair to expect Mr M and first direct to each share 50% liability for the final scam payment. But I don't consider it fair to expect first direct to reimburse Mr M for the earlier losses he is claiming for.

Looking at Mr M's statements, it appears he paid the loan capital back, without any additional interest or fees (as would normally be due under the loan contract), by the end of May 2022.

I explained in my provisional decision that I thought it would be fair and pragmatic to award 8% simple interest on top of the 50% refund for the payment funded by the loan. This is bearing in mind Mr M repaid the full amount of the lending within the next few months, so did suffer from loss of use of the funds. I said I'd consider any further submissions from first direct on this point – but first direct has replied to confirm it accepts this interest award.

My final decision

For the reasons given above, my final decision is that I uphold this complaint and direct HSBC UK Bank Plc to refund Mr M £7,550 – reflecting 50% of his fraudulent loss stemming from the final scam payment. It should also pay 8% simple interest per year on this amount, less any tax lawfully deductible.

HSBC UK Bank Plc must pay this compensation within 28 days on the date on which we tell it Mr M accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 February 2024.

Rachel Loughlin
Ombudsman