

## The complaint

Mrs S complains that HSBC UK Bank Plc trading as First Direct ('First Direct') won't refund the money she lost after falling victim to a scam.

## What happened

Mrs S's complaint has been brought by a professional representative, but as the account is in Mrs S's name – I'll refer to her throughout the decision.

In 2022, Mrs S saw an advert on a social media platform promoting cryptocurrency investment. Mrs S filled out her contact details and received a call the next day by a party I'll refer to as L. Mrs S says L was very knowledgeable and said her investment would be made through a company I'll refer to as B.

Mrs S was told to open an account with a genuine cryptocurrency platform, as well as an account with another bank. Mrs S was told to move money from her account with First Direct to the new bank account, onto her cryptocurrency account and finally to B. L opened an account with B for Mrs S and said he would make trades on Mrs S's behalf.

Mrs S can't recall what return she was told her investment would make, but says she checked an online review website in relation to B and saw positive reviews. She also checked the Financial Conduct Authority's website (FCA), but B wasn't on there. Mrs S says this wasn't surprising as she didn't believe B was a UK company. Mrs S doesn't have screen shots of B's website, but says it looked professional.

Mrs S initially made a small payment of £250 from a credit card account she held with another bank. Mrs S says the payment showed on her account with B which convinced her it was genuine.

After seeing her initial investment balance grow, Mrs S decided to invest further funds and L got Mrs S to download Anydesk, so he could guide her in making the transfers. Below are the payments Mrs S made from her First Direct account.

Date	Details	Amount
3.8.2022	Transfer to new bank account	£100
4.8.2022	Transfer to new bank account	£5,000
8.8.2022	<i>Withdrawal from investment</i>	<i>£512.90 cr</i>
11.8.2022	Transfer to new bank account	£25,000
18.8.2022	Transfer to new bank account	£25,000
15.9.2022	Transfer to new bank account	£25,000
15.9.2022	Transfer to new bank account	£4,000
20.9.2022	Transfer to new bank account	£25,000
20.9.2022	Transfer to new bank account	£25,000
20.9.2022	Transfer to new bank account	£3,000
20.9.2022	Transfer to new bank account	£5,000
3.10.2022	<i>Withdrawal from investment</i>	<i>£6,816.67cr</i>

16.11.2022	Transfer to new bank account	£8,500
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Mrs S says that L was calling her to 2 to 3 times a week to discuss her trades which built a level of trust. L told Mrs S that if she didn't make money he wouldn't either and that they were in it together. Mrs S was able to make an initial withdrawal from her investment a few days after her first payment, which persuaded her that the investment was genuine.

By October 2022, Mrs S's investment balance had grown substantially, and she asked to make a withdrawal which was paid to her account held with the other bank and she transferred it to her First Direct account. By November 2022, Mrs S's account with B was showing a balance of over \$1,000,000 and she asked to withdraw \$200,000, but L said she had to pay a substantial sum into the account to facilitate the withdrawal. Mrs S told L she only had £8,500 and was assured that if she transferred those funds to B, they would release some of the funds in her account.

After Mrs S made the last payment of £8,500, she kept contacting L asking when the withdrawal would be paid out and says she got a lot of excuses. Ultimately, in January 2023, when Mrs S hadn't received any money back and communication with L stopped, Mrs S realised she'd been the victim of a scam.

Mrs S raised a fraud claim with First Direct, who declined to refund her. First Direct say Mrs S's loss occurred on her account held with the other bank, therefore they're not liable.

Mrs S wasn't happy with First Direct's response, so she brought a complaint to our service.

An investigator looked into Mrs S's complaint and didn't uphold it. The investigator didn't feel First Direct should've have concerns about the payments Mrs S made based on her previous account activity and because the funds were going to an account in her own name.

Mrs S disagreed with the investigator's opinion, saying she made payments of over £50,000 on one day which was significantly higher than previous genuine payments she'd made. She also felt that had First Direct intervened and asked her about the payments, the scam would've been uncovered. Mrs S asked for an ombudsman to review her complaint.

### **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.

In broad terms, the starting position in law is that First Direct are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

First Direct are a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code), which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams in all but a limited number of circumstances. However, it doesn't cover payments made between a customer's own accounts. As Mrs S made the payments from her First Direct account to another account in her own name, her payments aren't covered by the CRM Code.

But there is expectation for First Direct to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. In situations where potential fraud is identified, I would expect First Direct to intervene and attempt to prevent losses for the customer.

Having reviewed Mrs S's previous account activity, I'm not satisfied that First Direct should've identified a scam risk or intervened before following Mrs S's payment instructions. I'll explain why.

Before making the payments as part of the scam, Mrs S had made similar or larger payments from her account previously. This included a bank transfer of £35,000, an internal transfer between her accounts of £80,000, as well as a payment to another bank for nearly £37,000.

While Mrs S set up a new payee for the first payment of £100, this was a low value payment. By the time Mrs S made the larger payments, she was paying an existing payee. I also have to take into consideration that Mrs S was paying an account in her own name, so First Direct wouldn't have known the end destination of the funds – being a cryptocurrency wallet. Which means these payments look less concerning than if they had been made to another individual.

I appreciate that Mrs S made four payments on 20 September which totalled over £50,000. However, taking into account her previous account activity, the previous payments she made to this same payee and that the earlier payments weren't made in quick succession, I'm not satisfied that these payments were so unusual and out of character that I would've expected First Direct to identify a scam risk and intervene.

As I'm not satisfied that First Direct should've intervened before following Mrs S's payment instructions, I can't fairly hold them liable for her loss.

In this case, as the funds were going to an account in Mrs S's own name, I wouldn't expect First Direct to try and recover the funds when Mrs S raised the fraud claim. As, if any funds remained in Mrs S's account with the other bank, she would've had access to them.

I'm really sorry that Mrs S has lost such a significant amount of money to a scam and the serious impact this has had on her health. But, for the reasons already explained, I can't fairly hold First Direct liable for her loss or ask them to refund her.

### **My final decision**

My final decision is that I don't uphold this case against HSBC UK Bank Plc trading as First Direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 14 March 2024.

Lisa Lowe  
**Ombudsman**