

## **The complaint**

Mr H is unhappy that HSBC UK Bank Plc trading as first direct ("First Direct") won't reimburse him a loss he says he suffered at the hands of fraudsters.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, I understand it to be as follows.

Between 5 May 2020 and 25 June 2020, Mr H made payments totalling £8,103, to seven different payees. He's said these payments were towards an investment opportunity that he'd become aware of through a social media platform.

Some months later, as part of a review of Mr H's account, First Direct asked Mr H about the payments and he told it the payments were being made to a friend. He's said at the time he didn't realise he could report the matter as a scam to First Direct.

Mr H complained to First Direct. It looked into his complaint and issued its final response in February 2023 not upholding it. In summary, it said Mr H had advised the payments were a loan to a friend and he'd been unable to provide any evidence to support the payments were being made for investment purposes. In view of this it considered this was a civil matter between Mr H and the people he paid.

Unhappy with First Direct's response Mr H brought his complaint to this service. One of our Investigator's looked into things and didn't think the complaint should be upheld. In summary she thought First Direct were fair in saying there wasn't enough information to safely say Mr H had fallen victim to a scam. Alongside this our Investigator said even if First Direct had provided Mr H with warnings, she thought he would have still been determined to make the payments.

Mr H didn't agree with our Investigator's view. In summary he's said he's sure he wouldn't have gone ahead with the payments, had the bank alerted him. Alongside this, Mr H has said at the time he wasn't mentally stable. He also doesn't think First Direct has done enough to try and recover the money he lost.

As agreement couldn't be 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'm very 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 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.

In broad terms, the starting position in law is that Mr H will generally be considered liable for authorised payments. It's accepted that he authorised the payments in dispute and so he is liable for them in the first instance. However First Direct is a signatory to the Lending Standards Boards Contingent Reimbursement Model (CRM Code). This is a scheme through which victims of Authorised Push Payment fraud can sometimes receive reimbursement from the banks involved. But the CRM code does not apply to "private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

So, I need to decide whether First Direct acted fairly, when concluding that this amounted to a civil dispute and not a scam. I find that it did, I'll explain why.

Whilst I understand Mr H believes he's been scammed, there is a high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006). And there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

I'm mindful in the circumstances of this case, some months after Mr H had made the payments he told First Direct that the payments he'd made were to a friend. Alongside this he's also been unable to provide any evidence regarding the investment opportunity he believed he was paying towards. When taking this into consideration, there simply isn't enough evidence to persuade me that a scam has taken place or that the high legal threshold or burden of proof for fraud has been met. I'm therefore satisfied that the conclusion First Direct reached wasn't unfair or unreasonable.

Having concluded that I can't safely say that Mr H has fallen victim to a scam, there is nothing further for me to consider, as a bank has no obligation to protect its customers from bad bargains or to give them advice on what they should buy. There are occasions when we do think banks should query payments – because of suspicious activity that appears unusual or uncharacteristic for the account or customer. If such potential fraud alerts are triggered, it is fair and reasonable for a banker to pause and ask questions of the payer about the transaction – which might unravel a scam and stop it before any loss occurs.

A bank does not have to intervene with authorised payments, and cannot be held liable for alleged losses, when there is in fact no fraud or scam, or if the payer has regrets or second thoughts after the event. As I've said above, the starting position is that the bank is expected to process payments and withdrawals that a customer instructs it to make without undue delay.

But even if I considered this was a scam, which for the avoidance of doubt and for the reasons I've explained I don't, I would also need to be persuaded that the bank's intervention would have made a difference and prevented the payments from being made. I have to base my findings on the balance of probability – that is, what I think is more likely than not to have happened, taking into account what I know.

Here, even if First Direct had spoken to Mr H before he'd made the payments and had asked proportionate questions, that I could reasonably have expected it to ask about the purpose of the payments he was making, I think it's more likely than not that he would have still gone ahead and made the payments. I say that because Mr H has explained how he considered the person he was paying had become a friend, and he had also told First Direct he was paying a friend some months later. From what I've seen, I think Mr H was intent on making the payments and I'm persuaded that had Mr H been questioned he would have maintained that he was paying a friend(s). I think this would have seemed like a plausible reason for making the payments and, in the individual circumstances of this case, I don't think it would have given First Direct cause for concern that he may have been at risk of financial harm.

Given there is insufficient evidence to say this is a scam, First Direct wouldn't have been under any obligation to try and recover the money Mr H had paid. But in any event, given the time that had elapsed between the payments Mr H made and him reporting the matter to First Direct, I don't think there would have been any prospect of First Direct being able to recover any of the money Mr H had paid.

Mr H has told us something of his background and circumstances, which I imagine was hard to do, I thank him for this. I don't mean to in any way diminish the difficult personal circumstances Mr H has been faced with, but I can't see that the bank would have been aware of any vulnerabilities he had at the time he made the payments, so there would have been no reason for First Direct to think he might be at higher risk of financial harm.

Overall, in the individual circumstances of this case, having carefully considered everything Mr H and First Direct have submitted, I don't find any fair or reasonable grounds to refund Mr H the payments in dispute.

### **My final decision**

My final decision is that I don't 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 H to accept or reject my decision before 2 April 2024.

Stephen Wise  
**Ombudsman**