

## **The complaint**

Mr S complains that HSBC UK Bank Plc trading as first direct ("First Direct") hasn't protected him from losing money to a scam.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mr S has explained that in October and November 2023 he made payments totalling almost £5,000 from his First Direct account for what he thought was a legitimate investment.

Mr S subsequently realised he'd been scammed and got in touch with First Direct. Ultimately, First Direct didn't reimburse Mr S's lost funds, and Mr S referred his complaint about First Direct to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a 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've decided to not uphold Mr S's complaint for materially the same reasons as our Investigator.

First, let me say, I don't doubt Mr S has been the victim of a scam here. He has my sympathy. Ultimately, however, Mr S has suffered his loss because of fraudsters, and this doesn't automatically entitle him to a refund from First Direct. It would only be fair for me to tell First Direct to reimburse Mr S his loss (or part of it) if I thought First Direct reasonably ought to have prevented the payments (or some of them) in the first place, or First Direct unreasonably hindered recovery of the funds after the payments had been made; and if I was satisfied, overall, this was a fair and reasonable outcome.

I'm satisfied Mr S authorised the relevant payments. First Direct would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Mr S is presumed liable for the loss in the first instance, in circumstances where he authorised the payments. That said, as a matter of good industry practice First Direct should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect First Direct to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds).

Here, having reviewed Mr S's account and the payments he made to the scam, I'm not persuaded First Direct ought to have found any of the payments suspicious, such that it ought to have made enquiries of Mr S before processing them. I accept that the payments

were to a crypto provider, but that doesn't mean payments should automatically be treated as suspicious, particularly when there are no other concerning factors about the payments. And here the payments were individually and collectively, spaced as they were, not of the type that I could reasonably expect First Direct to have been concerned about them. This means I can't fairly say First Direct unreasonably failed to prevent the payments, or that it should be held responsible for Mr S having made and lost them.

I understand these payments were sent from Mr S's First Direct account to a crypto account Mr S held with a third party from where they were transferred on, from there, to the scammers. By the time Mr S told First Direct he'd been scammed, I understand these funds, as part of the scam, had already been moved on from there to the scammers. So unfortunately there wouldn't have been anything First Direct reasonably could have done to recover these funds. So I'm satisfied I can't say First Direct unreasonably hindered recovery of the funds, nor therefore that it can be reasonably held responsible for Mr S not being able to recover the funds.

I'm sorry Mr S was scammed and lost this money. But despite my natural sympathy, I can't fairly tell First Direct to reimburse him in circumstances where I'm not persuaded it reasonably ought to have prevented the payments or to have recovered them.

### **My final decision**

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 March 2025.

Neil Bridge  
**Ombudsman**