

The complaint

Miss D complains that HSBC UK Bank Plc trading as first direct wouldn't allow her to raise a payment dispute without speaking to her further on the phone.

What happened

The details of this complaint are well known to both parties. But I've summarised the key events to give context to my decision, which I'll go on to explain below.

In May 2023, Miss D contacted first direct to raise a payment dispute - but it said she hadn't passed security (which Miss D disagrees about). She called back later that day and was passed to the payment dispute team. Before being transferred, Miss D expressed frustration about the process. It appears her online banking had been blocked due to concerns by first direct about the failed security attempt.

Miss D explained she had been making a payment for a subscription service (from Apple's "App Store"). She tried to pay via Apple Pay, which is linked to her first direct debit card, but thought the payment hadn't gone through. She made the payment on her card, but then saw the Apple Pay transaction had gone through. She had also been charged £28.99 for it, whereas she says she should have been charged £23.99 (which is the amount of the direct card payment).

Miss D mentioned she had already disputed the payment with Apple Pay. First direct told her she would therefore need to wait for its response, in case it could recover/reimburse the payment, before it would look at raising a chargeback claim. Following some back and forth about what Miss D needed to do, and the service provided during the calls, first direct ended the call.

A few weeks later, Miss D raised a complaint with first direct. She said it wouldn't let her dispute the payment. First direct tried to call Miss D – it says it wanted to discuss her complaint and was also going to transfer her through to the dispute team so this could be picked up. But when it got through to Miss D, she wouldn't accept the call.

First direct sent Miss D an email saying it still needed to discuss the transaction over the phone in order to raise a dispute. Miss D said she couldn't call and denied she had failed the security process. Unhappy with first direct's response, she referred her complaint to our service.

Our investigator looked into Miss D's complaint – but didn't uphold it. They found Miss D had initially failed security. They thought it was reasonable that first direct had told Miss D to wait until she found out if she could get a refund through Apple before raising a dispute. And they also thought it was fair for first direct to require a call before it would proceed with a dispute.

They noted first direct did have other options available if someone was unable to call in the usual way, such as due to hearing loss – but didn't think that applied in Miss D's case.

Miss D appealed the investigator's outcome. She maintained she couldn't call due to illness. She said the reason why she can't call is "nothing to do with anyone" and is down to her personal health. She also said she wouldn't have banked with first direct if she had known this was its process.

The investigator explained these comments didn't change their outcome, as they couldn't see first direct had been notified in advance that Miss D had any support needs that meant she couldn't call. They were also satisfied first direct's terms made it clear Miss D would need to call to raise a payment dispute.

As no agreement was reached, the case was passed to me. In April 2024, I issued my provisional decision explaining why I wasn't minded to uphold this complaint:

I've seen points at which Miss D has described the payment she is disputing as unauthorised. So, to start, I have considered whether first direct holds liability for the payment on this basis. Under the relevant regulations – the Payment Services Regulations 2017 (PSRs) – first direct would generally be liable for unauthorised payments.

Under the PSRs, whether a payment is authorised comes down to whether the account holder has consented to it. This has a particular meaning under the PSRs. In effect, if Miss D (or someone acting with her authority) completed the agreed steps to make a payment, then she has consented to it. It's not a matter of informed consent.

By Miss D's own explanation, it appears the payment was authorised. That's because when she called to dispute the payment, she made reference to having used Apple Pay to make it.

While I appreciate she didn't think the payment had gone through, it does appear she completed the agreed payment steps (selecting Apple Pay and then completing Apple's authentication – such as entering her passcode or using touch or face ID).

I therefore don't think there are grounds to hold first direct liable for the payment due to it being unauthorised. But, from what Miss D has described, there is a suggestion that something went wrong. She says the amount was more than she was expecting, and it also appeared not to have gone through.

I've therefore considered whether first direct ought to have been able to do more to help Miss D in relation to this payment. As it was a card payment, it falls within the scope of the chargeback scheme. This is a voluntary scheme run by card issuers (such as Visa or Mastercard) to resolve payment disputes between consumers and merchants. Miss D has also mentioned her rights under Section 75 of the Consumer Credit Act 1974. But as this payment wasn't funded by credit, this isn't a relevant consideration.

There are limited circumstances in which consumers can raise a chargeback, and there are rules about what evidence is needed to support a claim. Those are set by the card issuer, who also has the final say on whether a claim should succeed. If it does succeed, the money is recouped from the merchant paid directly.

As the scheme is voluntary, first direct isn't obliged to put forward claims just because the consumer wants to raise one. But in line with good industry practice, I'd expect it do to so if the claim was likely to succeed under the scheme rules. That normally comes down to what evidence the consumer is able to provide to support their reason for claiming. And it's normally a condition/expectation that you should first of all try to resolve the matter with the merchant directly in the first instance.

Given the above, I don't think it was unfair for first direct to advise Miss D to come back (rather than immediately starting the process for a chargeback claim) when she explained she was waiting on a response from Apple. I also considered it handled the calls from Miss D fairly. I've found she didn't pass security in the first call, so it was reasonable not to proceed and to take action to ensure the account wasn't at risk. I also think the later call was unproductive due to how Miss D engaged with first direct, so I understand why it ended the call – having already explained to Miss D to come back after she had allowed Apple time to respond.

Miss D says she didn't hear back from Apple. But rather than call back again as first direct had advised, she raised a complaint to first direct that it hadn't raised a dispute for her. First direct tried to call her. It says it wanted to discuss the concerns she raised, but was also planning to put her through to the disputes team so she could proceed with her claim. But Miss D wouldn't accept the call.

First direct maintained Miss D needs to speak to its dispute team on the phone to proceed with her claim. I've checked and that is the policy it has set out on its website. First direct has explained this is its approach as it has found it's the best way to ensure the consumer understand the process and what is required, to maximise the chances of a claim succeeding.

I've checked and I do think first direct has made the process of calling to dispute a payment clear. And it is reasonable for it to set this policy, in order to try to support the chances of a claim succeeding. However, Miss D says she is unable to call. So, I've considered whether the policy was applied unfairly here.

I can't see first direct was informed in advance of this incident of any adjustments Miss D needed due to her health. So, I think it was reasonable for it to direct her to follow its usual process when she first got in touch about her dispute. Particularly bearing in mind this contact was initiated by Miss D over the phone. I don't think first direct had cause to think this process was inappropriate for her.

When first direct received Miss D's complaint, it tried to call her – to put her through to the relevant team. Again, I can't see why it had cause to think this wasn't appropriate for Miss D. Nor do I think what Miss D has told us, or first direct, ought to have prompted it to put additional support measures in place.

Miss D has made the point that calling wouldn't be suitable for someone with hearing difficulties. First direct has also explained it has a modified process for those situations – using a text relay service to help consumers communicate over the phone. I'd point out this adjustment still doesn't mean consumers don't have to call.

In any event, it doesn't appear Miss D is saying this is why she can't call. She has said it is due to illness. But I can't see any point at which she has provided full details of why she can't call. Rather, she has maintained this is not first direct's business.

I do appreciate why Miss D may not wish to discuss her health, and views it as a private matter. But I can't hold first direct at fault for not making adjustments if it hasn't been provided details about what Miss D needs and why. Without this, it won't have a full picture to accurately assess and consider what support or adjustments it can provide.

In these circumstances, I'm not persuaded first direct treated Miss D unreasonably by not providing her with an option other than calling to pursue a claim. That is its policy, which appears to have been set with customer interest in mind. I don't think it had grounds to deviate from it here. I therefore don't think it is at fault for not putting through Miss D's chargeback – which, in any event, I don't know would have succeeded.

I also think first direct provided a reasonable level of customer service throughout. It took steps to try to support Miss D with the process, such as attempting to call her to put her through to the relevant team, and was clear about the process. I think it maintained a professional tone in response to contact from Miss D which was, in truth, quite difficult to manage at points.

Overall, for the reasons I've set out, I'm not minded to direct first direct to refund this payment – or to otherwise compensate Miss D in connection with this complaint.

I invited both parties to provide any further comments or evidence. First direct confirmed it accepted my provisional decision. Miss D disagreed. In summary, she said she *did* call first direct to dispute the payment; she has a doctor's note which confirms she can't make phone calls; and she disagrees that written letters shouldn't be accepted as instructions. She later said it wasn't one payment she was disputing, but two payments of £38.

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 not to uphold it. That is largely for the reasons I gave in my provisional decision, which are set out above and form part of my final decision. I'll therefore focus here on responding to the points Miss D has raised following receipt of my provisional findings.

I'll start by clarifying which payment(s) I'm considering. While Miss D's most recent email said she was disputing two payments of £38, that doesn't match what she has told us and first direct previously. This is what she said in her complaint to first direct on 6 April 2023:

"The amount that has been stolen is £28.99 on 13th march.. [the] amount should have been only £23.99 which was taken at the same time... There should not have been two payments"

Looking at Miss D's statements, I can locate both of the payments referred to above, dated 13 March 2023. Miss D also gave a specific code for the £28.99 payment she said shouldn't have been taken – which again matches her statement. I think that makes it clear what payment she was disputing.

Having listened to the call Miss D had with first direct initially, it's also clear she was disputing this payment. As she did in her email which I've referenced above, she said it was the £28.99 payment that shouldn't have been taken. She didn't mention disputing any other payment(s). As covered in my provisional decision, she also mentioned having made the £23.99 payment.

The scope of what I can consider is set by the issues Miss D raised in her initial complaint to first direct – and then referred on to us. I'm satisfied her complaint was about her attempts to dispute the payment I have mentioned above. I'd also point out that, even if I got the payment details wrong, that wouldn't undermine what I have said about why I think it was reasonable first direct didn't proceed further looking into Miss D's dispute.

While Miss D says she did speak to first direct on the phone to dispute the payment – the conversation she had was about disputing the £28.99, not any other payments (as she is now suggesting). Regardless, first direct also made it clear she would need to get back in touch after/when she had finished pursuing the matter with Apple. As explained above, I'm satisfied that was reasonable.

I haven't suggested that written instructions are invalid. Rather, I have said that, in these particular circumstances, it was reasonable for first direct to require a call with Miss D to help consider whether it could do more to help with her payment dispute. For the reasons set out above in my provisional decision, I'm satisfied first direct followed its procedures correctly and fairly.

Miss D says she has medical evidence to support that she is unable to call. She hasn't provided us with this evidence. Regardless, I'm satisfied I don't need to see this in order to reach a fair decision here. At the time of Miss D's contact with first direct which is the subject of this complaint, I've not found it was on notice of anything at that time which meant it ought to have known to deviate from its normal policy, or to provide Miss D with a different level of service.

Overall, I'm not persuaded there is further action first direct needs to take to resolve Miss D's complaint.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 21 June 2024.

Rachel Loughlin
Ombudsman