

## **The complaint**

Mr L complains HSBC UK Bank Plc trading as First Direct didn't contact him in the fastest way possible to let him know it wanted to check a payment he'd made was genuine. He says that he's had to pay additional tax as a result and wants compensating.

## **What happened**

Mr L has an account with First Direct and has been a customer for almost 15 years. He says he chose First Direct because he's "time-poor" and travels between countries regularly, so needs a bank that allows him to transact quickly and efficiently without delays or mistakes.

On 30 March 2021 Mr L sent a "test" payment to his pension provider knowing that he was going to be sending a large payment – his remaining allowance for the 2020 / 21 tax year – before the end of the tax year. In other words, before 5 April 2021. The test payment was a success, so he went ahead and sent the large payment to the same account the following day. He says his mobile banking app showed the payment had gone through so he had no reason to believe it wouldn't be received.

On 6 April 2021 Mr L says he received an email from his financial advisor asking for information needed to check his payment had been received. Mr L says he logged into his mobile banking app to get the information he'd been asked for and says couldn't see the payment he'd made. He says he sent a second payment and called First Direct to find out why his original payment hadn't gone through. He says the agent he spoke to told him that First Direct had tried to call him to check the payment was genuine and had reversed the payment as it hadn't been able to speak to him. He says the agent told him that First Direct had sent him a letter asking him to get in touch. Mr L said that he was away at the time and that his mobile was switched off, so calling him and sending him a letter wasn't helpful. He said that he would have expected First Direct to contact him electronically. He ultimately complained saying that his pension provider wasn't able to get this second payment applied towards the 2020 / 2021 tax year meaning he wasn't able to use his full allowance for that year. That's despite First Direct sending him an email confirming what had happened.

First Direct looked into Mr L's complaint and agreed that its service wasn't as good as it could have been – for which it offered to pay £200 in compensation. Mr L wasn't happy with First Direct's response, saying he'd paid almost £12,000 in tax because First Direct didn't contact him using the fastest way possible, and that he needed to be properly compensated for his losses. He complained to our service as he wasn't happy.

One of our investigators ultimately upheld Mr L's complaint for reasons I don't need to go into. First Direct didn't agree with our investigator's recommendations, so asked for Mr L's complaint to be referred to an ombudsman. His complaint was, as a result, passed to me.

## **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.

Last month I issued a provisional decision having spoken to Mr L at length and having shared my thoughts with First Direct too. Following my involvement, First Direct offered to pay Mr L £6,000 as a goodwill gesture – in other words, to cover 50% of the tax loss Mr L says he's made – with 8% simple interest on top. In my provisional decision, I said that I thought that First Direct's offer was fair and reasonable so that was what I was minded to require it to do. Both parties were invited to comment on my provisional decision. First Direct said it had nothing to add. Mr L sent a detailed response.

In my provisional decision, based on additional evidence Mr L had sent me, I said

*"I'm satisfied that Mr L was able to:*

- check and respond to emails;*
- check and respond to messages;*
- make and receive calls;*
- log into his online banking and his mobile banking app; and*
- check and make payments,*

*throughout the whole time that he was abroad if he wanted or needed to. That isn't the same as saying Mr L was checking and responding to emails and messages and making and receiving calls throughout the time that he was abroad. I say that because Mr L has at times during this complaint told First Direct that his phone was switched off and that he doesn't have an answerphone so he wouldn't have got any calls it made. I've also seen messages that suggest that Mr L wasn't always monitoring or checking his phone. I'll come back to this later. I'm also satisfied, having listened to the two calls he made to First Direct, that Mr L didn't always have good reception whilst he was abroad. I say that because during the calls he made to First Direct there are times when it's difficult to hear what Mr L is saying and there are times when the line breaks."*

In my provisional decision, I also said:

*"One of the reasons why I'm satisfied Mr L was able to check and respond to emails / check and respond to messages / make and receive calls / log into his online banking and his mobile banking app and check and make payments throughout the whole time that he was abroad is because Mr L has sent me screenshots of messages he received at the time – to which he responded – and photos and credit card statements that satisfy me he was abroad:*

- in the days running up to the end of the 2020 / 21 tax year;*
- when he made the test payment on 30 March 2021;*
- when he made the first payment on 31 March 2021;*
- when he received the email from his pension provider on 6 April 2021;*
- when he logged into his mobile banking app on 6 April 2021;*
- when he made the second payment on 6 April 2021; and*

- *when he called First Direct on 6 April 2021.”*

Before I issued my provisional decision, First Direct appeared to assume that Mr L had made his large payment and then gone away on holiday. And to assume that this was why Mr L wasn't easily contactable after he'd made his large payment. I don't think that was an unreasonable assumption to make. But knowing that Mr L was away throughout the whole-time changes, in my opinion, the analysis in this case which is one of the reasons why my provisional decision set out in detail what I considered had happened.

In my provisional decision, I said:

*“Based on the evidence I've seen, I can't say for certain that First Direct would have got to speak to Mr L had it called – given the problems he was having with reception and the evidence I've seen that suggests he might not have been monitoring his phone closely as he was on holiday relaxing that day. I am, however, satisfied that First Direct might have got through to Mr L. I'm also satisfied that had First Direct done so, Mr L would have either confirmed his payment was genuine or – in the event that the payment had already been reversed – that he would have re-sent it. In other words, I'm satisfied that Mr L would have been able to make sure his pension provider received his payment before the end of the 2020 / 21 tax year.”*

Mr L had a number of comments on my provisional decision, one of which was that he didn't agree that he wasn't monitoring his phone, and that his comment about switching off his phone was a comment he'd made knowing that he sometimes turns his phone off at night or puts it into airplane mode. He also said that he doesn't have an answerphone to avoid getting charged when people leave him messages when he's abroad, and that people usually send him a quick text message if he can't answer, and that he replies quickly. He said that there was only one message that he'd sent suggesting he wasn't monitoring his phone, but that he sent that message because he didn't want to get drawn into a conversation and instead wanted to relax and read a book – he was on holiday at that point. I accept that only one of the messages Mr L sent said he wasn't monitoring his phone, and that he did reply to subsequent messages from that sender. But his overall evidence does, in my opinion, suggest that having made the payment Mr L wanted to relax and read a book and enjoy his holiday. In the circumstances, I don't think it's unreasonable to say that he more likely than not wasn't monitoring his phone closely.

I accept that Mr L would more likely than not have confirmed his payment was genuine or – in the event that the payment had already been reversed – that he would have re-sent it had First Direct got through to Mr L. I said as much in my provisional decision. I have no reason to doubt that Mr L would have replied quickly had First Direct texted him. And that a text message is the best way to get in touch with Mr L quickly – given everything he's said about his mobile phone and his lifestyle. I can also understand why Mr L feels very strongly that First Direct had a contractual obligation to send him a text message in the event that it reversed one of his payments. I don't, however, fully agree. More importantly, even if I accept that First Direct could have done more in this case – which I have done – I remain of the view that Mr L could have done more too, particularly given the additional evidence he sent me which I've summarised above.

In short, given everything I've just said, I remain of the view that both parties could have done more here. I know Mr L has said that First Direct is more to blame than he is, and that a 50 / 50 split isn't, therefore, fair. But that's normally our starting point in analogous cases. And in this case, given that First Direct has made an offer, I don't think a 50 / 50 split is unfair. I appreciate that this will be disappointing for Mr L, and I'd like to thank him for his detailed submissions.

### **Putting things right**

First Direct has offered to pay Mr L £6,000 as a goodwill gesture – in other words, to cover 50% of the tax loss Mr L says he's made – with 8% simple interest on top. I consider that to be a fair offer given everything I've just said, including the steps that Mr L could have taken to mitigate his losses in light of what he could and couldn't do at the time. So, that's the award I'm going to make.

### **My final decision**

My final decision is that HSBC UK Bank Plc's offer to pay Mr L £6,000 plus 8% simple interest on top is fair and reasonable. So, that's the amount I'm going to require HSBC UK Bank Plc to pay Mr L in full and final settlement of his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 July 2024.

Nicolas Atkinson  
**Ombudsman**