

## The complaint

Mrs W is seeking to recover from HSBC UK Bank plc trading as first direct (“First Direct”), multiple payments she made between December 2021 and February 2022 from her bank account as a result of a third-party scam.

## What happened

I’m not going to cover all the points raised in detail. The view of 9 February 2024 covered the detailed timeline of the transactions and the details of Mrs W’s testimony.

But briefly Mrs W and her husband fell victim to a safe account scam. In December 2021, Mrs W received a call from someone who said they worked for her bank and then later she received calls from someone purporting to be from the Financial Conduct Authority (FCA) but who, ultimately, turned out to be a scammer. The scammer persuaded Mrs W that her account was under attack, and she needed to move her money to a safe place. They coached Mrs W through the process. Mrs W and her husband transferred investments into their joint account (subject of a separate complaint) and into Mrs W’s sole account with First Direct. Mrs W’s mother also transferred money from her accounts (subject of a separate complaint) to Mrs W’s account. From here the money was moved to cryptocurrency wallets set up in Mrs W’s name and from there into what Mrs W was led to believe to be a safe account with another bank.

The table below summarises the transactions and First Direct’s summary of warnings:

Date	Amount	Channel	Warning
09/12/2021	£1,000	Telephone	Given - Verbal
10/12/2021	£1,100	Telephone	Given - Verbal
11/12/2021	£45,000	Telephone	Given - Verbal
11/12/2021	£48,900	Telephone	Not Given
12/12/2021	£45,000	Telephone	Given - Verbal
12/12/2021	£49,000	Telephone	Not Given
13/12/2021	£49,900	Telephone	Not Given
13/12/2021	£49,800	PIB	Given - Verbal
14/12/2021	£49,800	Telephone	Not Given
14/12/2021	£49,700	PIB	Not Given
14/12/2021	£199,000	Telephone	Not Given
15/12/2021	£90,000	Telephone	Not Given
20/12/2021	£152,000	Telephone	Not Given
21/12/2021	£100,000	Telephone	Not Given
23/12/2021	£135,000	Telephone	Not Given
23/12/2021	£126,800	Telephone	Not Given
23/12/2021	£190,900	Telephone	Not Given
24/12/2021	£88,900	Telephone	Not Given
29/12/2021	£11,000	cryptocurrency credit in	

07/01/2022	£49,900	PIB	Not Given
08/01/2022	£49,100	PIB	Not Given
08/01/2022	£49,900	PIB	Not Given
08/01/2022	£49,100	PIB	Not Given
09/01/2022	£49,900	PIB	Not Given
09/01/2022	£49,800	PIB	Not Given
09/01/2022	£49,100	cryptocurrency credit in	
09/01/2022	£49,900	cryptocurrency credit in	
10/01/2022	£3,000	PIB	Given - Lightbox
10/01/2022	£37,000	PIB	Not Given
11/01/2022	£49,900	PIB	Not Given
11/01/2022	£150,000	Telephone	Given - Verbal
11/01/2022	£49,800	PIB	Given - Verbal
11/01/2022	£49,700	PIB	Not Given
11/01/2022	£17.15	cryptocurrency credit in	
12/01/2022	£49,900	PIB	Not Given
12/01/2022	£49,800	PIB	Not Given
12/01/2022	£99,915	cryptocurrency credit in	
13/01/2022	£49,900	PIB	Given - Lightbox
13/01/2022	£49,800	PIB	Not Given
13/01/2022	£186,677.18	cryptocurrency credit in	
14/01/2022	£35,811.27	cryptocurrency credit in	
15/01/2022	£49,900	PIB	Not Given
15/01/2022	£49,800	PIB	Given - Verbal
16/01/2022	£49,900	PIB	Not Given
17/01/2022	£1,010	PIB	Given - Lightbox
18/01/2022	£40,400	PIB	Given - Verbal
19/01/2022	£10,100	PIB	Given - Verbal
25/01/2022	£40,400	PIB	Not Given
26/01/2022	£33,582.50	PIB	Not Given
31/01/2022	£49,900	PIB	Not Given
31/01/2022	£49,800	PIB	Given - Lightbox
01/02/2022	£40,400	Telephone	Not Given
02/02/2022	£49,500	PIB	Not Given
02/02/2022	£49,417	PIB	Not Given

Notes on table:

PIB is personal internet banking.

Light and dark greyed out transactions:

- The payments on 9/12/21 and 10/12/21 are not being upheld so not included in the loss
- The payment on 13/12/21 was stopped and reversed so not included in the loss.
- The final 5 payments were funded by payments from Mrs W's mother and have been refunded to Mrs W's mother by her banks – so do not form part of the total losses.
- The transactions on 25/01/22 and 26/01/22 were funded by the £74,000 payment that came into the account – funds that originated from Mrs W's mother.

Blue highlighted transactions: credit from cryptocurrency to be deducted from losses.

Our investigator upheld the complaint in part. She felt by the third transaction (which was for £45,000) First Direct should have been doing more than it did. She concluded that First Direct should refund this and all the transactions that followed (except for those already refunded). The investigator also felt it was fair for Mrs W to share in the responsibility for her losses – so recommended First Direct make a 50% deduction from the refund.

Mrs W accepted the view. First Direct did not. It said:

This dispute would be more suited to the court process. Not only is the value many multiple times this service's award limit, but the complexity of this matter makes the formal procedures of the court (including disclosure and witness evidence) the appropriate forum. It has very little evidence about what was said between Mrs W and the fraudster. Nor any visibility over what happened with the funds after they left the account with First Direct.

Even if it had intervened to a greater extent than it did, it still considers Mrs W would have suffered a loss. It considers its warning on 9 December 2021 ought to have resonated with Mrs W but she continued to make increasingly large payments – so its warnings didn't make a difference. The payments were funded by accounts elsewhere. Even if they had prevented the payments, Mrs W and her family would most likely have moved the money from their other accounts anyway.

I issued my provisional decision on 17 May 2024 explaining why I was thinking of the same outcome as the investigator but proposed First Direct put things right in a slightly different way. For completeness I have attached my provisional decision below:

*I should start by saying I am deeply sorry for what has happened to Mrs W and her family; this was a cruel scam and their losses are significant.*

*I note First Direct's response to the view that this case is better suited to court but I've been asked to consider this complaint and I see no reason why I can't determine an outcome on this case. There is clearly a limitation about what I can award in this case, but Mrs W is represented by a solicitor, and they are aware of the award limits and that it's unlikely she can accept the decision and then go to court for the remainder.*

*I note in First Direct's solicitor's letter to Mrs W's solicitor on 2 February 2023 it says:*

*If your clients intend to continue with the FOS Complaint, the LOC has been issued prematurely and the parties ought to continue to engage with the FOS and await the outcome of the FOS Complaint. In this case, it would not be appropriate for the Bank to respond to the LOC while the FOS Complaint is ongoing.*

*So, it seems at some stage – First Direct also wanted to await an outcome from this service. In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.*

*Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.*

*In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.*

*Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider First Direct should fairly and reasonably:*

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.*
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers including the use of cryptocurrency) and the different risks these can present to consumers, when deciding whether to intervene.*

*Should First Direct have done anything more before it processed Mrs W's payments?*

*I've considered whether First Direct should have identified that Mrs W was potentially at risk of fraud as a result of the payments she made, or otherwise done more to protect her. First Direct did in fact intervene on a number of occasions, including on the very first disputed transaction. So, the bank was sufficiently concerned about the possibility of fraud to ask questions and warn of fraud and scams. Accordingly, it's just a question of whether it did enough in all the circumstances.*

*Whilst the first two payments involved a new payee and were payments to two different cryptocurrency providers, I think First Direct could reasonably take some comfort (at least initially) from the fact that Mrs W indicated when making the first payment that she was transferring the money to her own account. In addition, the payments were not of significant amounts and represented only a small part of Mrs W's current account balance which stood at over £268,000 at the time.*

*However, just two days after the initial payment, when Mrs W had already explained to First Direct she wasn't sure whether she would transfer any more money to the same payee as she would need to see how the investment went (two days not really being sufficient time to make a reasonable evaluation of how an investment is going in my view) – Mrs W made a more sizeable sum of £45,000.*

*The pattern of activity surrounding this payment and the initial two payments was also unusual with multiple large sums transferred in from investment firms in quick succession. In my view this combination of circumstances ought fairly and reasonably to have led First Direct to make additional enquiries before making the payment to establish the circumstances in which Mrs W was making (what had become an out of character series of) payments involving a large amount of money in a short period to cryptocurrency providers; a pattern of activity that could be consistent with certain types of scams.*

*Having said she would see how the investment would go, not only does Mrs W very quickly start sending large sums – she also (five days into sending the payments) says it was becoming a bit of a bore having to phone and chase each payment as she is wanting to send a lot of money here. This represented a sudden change from what she had initially indicated and therefore needed closer scrutiny.*

*The payments may have been going to accounts seemingly controlled by Mrs W (as she herself was led to believe). But First Direct will be well aware that there are circumstances where a customer might indicate that an account is under their control, but that turns out not to be the case. It can't, fairly and reasonably, entirely rely on what its customer has told it or always take its customer's selected payment purpose at face value.*

*And by 11 and 12 December 2021 Mrs W called First Direct to check whether the transfers had been made. On 11 December 2021 Mrs W made three calls in quick succession and one call was made just two minutes after another one - with a sense of urgency about whether the payment had gone through. The call handler did mention criminals convince customers to send money by pretending to be from the bank or police or other trusted organisations. But the caller did not delve further.*

*First Direct also seeks to rely on the (arguably more detailed) call it had with Mrs W two days earlier when she made the relatively modest payment of £1,000. I have listened to both calls that occurred that day – each around five minutes long.*

*Despite Mrs W telling First Direct she was making an investment; it seems First Direct had identified the particular scam Mrs W was falling victim to. And, whilst the caller does talk about the specific scam that Mrs W fell victim to in that a fraudster might 'Pretend to call from a trusted source', it feels like a script is being read at Mrs W and 'the bank' gets lost in a list of other trusted organisations. And of course, by this point Mrs W believed her contact was with the FCA and this isn't within the list. There are some warnings; for example the caller warns about calls from trusted organisations to 'prevent fraud' and that banks would never request for you to make a payment to them or to an account in your own name. But these get lost in other warnings that weren't relevant. Mrs W of course was convinced she was talking to the genuine regulator and had verified the spoofed number she had been called from.*

*Whilst this conversation might have been proportionate to the situation two days earlier, its relevance would have diminished over the course of the two days. But even if this had been repeated on 11 December 2021, I don't think these warnings were enough to resonate with the full circumstances which Mrs W found herself in.*

*I do think First Direct could have asked more open questions and probed more – for example it could have asked Mrs W questions about the friend where she'd researched the opportunity. Safe account scam victims are often given a cover story or coached through the process – so much more probing was needed to test this story.*

*I have also considered the later calls where similar scripts are read out. But there is no open questioning or engagement with the consumer. Overall, I don't think the warnings are particularly direct, personal or clear - which is essential in a safe account scam – particularly so given the level of coaching that's often involved in this type of scam and the fact the consumer genuinely thinks they are speaking to the bank or, in this case, the FCA.*

*It doesn't bring to life what scams of this nature look and feel like and could, for example, explain that genuine bank or other organisations' phone numbers can be spoofed – a common feature of this type of scam and exactly what happened here. So I don't think the warnings in the calls went far enough.*

*I also note some 'light box warnings' were given for some of the online transactions. These weren't particularly relevant to Mrs W's situation - in part because she selected 'investment' for the payment purpose rather than 'unexpected request'. I appreciate Mrs W told First Direct she was making an investment – which did make it that much harder for First Direct to provide a relevant online warning. I'm not going to go into detail on these because I think the*

*activity warranted intervention beyond this type of warning anyway and because I think First Direct had actually identified the particular scam Mrs W was potentially falling victim to – despite her cover story.*

*If First Direct had made further enquiries before the third transaction would that have prevented the losses Mrs W incurred after that point?*

*Of course, I can't know for sure what would have happened had First Direct probed Mrs W further about these payments. So, I have to base my findings on the balance of probabilities – that is, what I think is more likely than not to have happened, taking into account what I know.*

*First Direct suggests that if it had prevented Mrs W from making the payments she would have made them from other bank accounts thereby suffering the same loss. This is a possibility that I have considered.*

*But I see no reason why better questioning and probing would not have broken the spell. With better questioning Mrs W's cover story would likely have fallen apart and would have put First Direct on alert and with probing and open questions I think First Direct's questioning and warnings would have caused sufficient doubt in Mrs W's mind not to proceed with the payments.*

*Should Mrs W share in the responsibility for her losses?*

*I've thought about whether Mrs W should bear any responsibility for her loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint.*

*I won't go into detail here as Mrs W accepted the investigator's conclusions but for completeness I agree – broadly for the same reasons. I understand there were sophisticated aspects to this scam and that Mrs W was acting under the fear of losing all her and her family's assets. Some of the documents such as the letter from the FCA and bank statements where funds were ultimately supposedly deposited do look convincing at first glance.*

*However, by the time of the third transaction I think there were signs that things weren't quite right. The initial call had taken place around the 2 December 2021 and the first transaction was almost a week later. I do think there was time to reflect on what Mrs W was being told. Whilst I appreciate, she did look up the number of the caller purporting to be from the FCA, she never called this number which would have revealed the scam. Although it was her account that had been compromised – a lot of money was moved into it from other accounts over a long period of time.*

*Where I find that the bank didn't do enough and the consumer should share in the responsibility for their losses, I consider it is fair and reasonable for the loss to be split between the parties.*

*On that basis, I think it's reasonable for Mrs W to share the responsibility with First Direct and reduce the refund on the payments by 50%.*

*Mrs W cashed in investments and other assets as a result of this scam. The investigator originally said First Direct should refund this, but I understand Mrs W has no outstanding tax liabilities.*

*Therefore, although it is immaterial here, it might help if I explain that I wouldn't normally expect First Direct to cover such a loss in a case like this. The reason I say this is because the primary financial loss is the money Mrs W lost to the scam itself. This is the key foreseeable loss that flows from First Direct's failure to prevent the scam. I am mindful there was a third party involved here and I am not considering what would have happened but for the fraud, I am considering what would have happened but for the bank's mistake. And I consider any loss from an associated tax liability to be too remote from the bank's failing's here.*

## **Responses to my provisional decision**

Mrs W has confirmed she has nothing further to add. First Direct didn't agree with my provisional decision. It said:

It considers Mrs W would have made the payments regardless. It explained there are a number of points underpinning this and highlighted the following points from the representative's complaint letter dated 16 September 2022 (paragraphs referenced in brackets):

- Mrs W was first contacted by the fraudster on 2 December 2021, seven days before the first scam payment on 9 December 2021 (and 9 days before the date the provisional decision states First Direct ought to have successfully intervened). In this period, the scammers contacted Mrs W extensively.
- Mrs W was called at least three times on 2 December 2021 by three separate individuals (two from 'First Direct' and one from the 'FCA') (paragraphs 1-3). Mrs W was again contacted by the 'FCA' on the morning of 3 December 2021 and told that "her account had been compromised by unknown employees at Mrs W's local branch" (paragraph 4). Mrs W was also told of a "Financial Portal", which was being "misuse[d]" by First Direct and that the 'FCA' was helping twelve victims, all over 65 and with links to First Direct and another financial institution where Mrs W held investments. As a result of this contact and social engineering, Mrs W will have been under the spell of the fraudsters at that early stage and conditioned to distrust First Direct.
- Mrs W was required to "call [the scammer] three times daily" (paragraph 6). Her husband was also later "bombarded with multiple telephone calls a day". This contact with the fraudsters was constant (paragraph 17).
- By 5 December 2021 (still 4 days before the first scam payment from the First Direct account and the first contact with First Direct), Mrs W had been convinced that there was insurance cover in place to cover her losses, and she had received a letter on FCA letterhead about the investigation of banks and financial institutions, and another document described as a 'Risk Assessment'.
- On its first call with Mrs W on 9 December 2021, Mrs W asked suspiciously at the outset "how do I know you're from First Direct". This will have been the result of the fraudster (from the 'FCA') convincing Mrs W that she should be suspicious of First Direct. This will clearly have influenced what Mrs W would have told First Direct in this call, and in subsequent calls. The representative said "it was impossible for Mrs W to distinguish between genuine employees at First Direct and individuals who we now know to be fraudsters" and that, when called by the genuine First Direct, "the First Direct call operators had no security details to offer Mrs W" (paragraph 22) – this demonstrates the extent to which Mrs W was under the spell (believing First Direct would provide her with security details rather than taking steps to verify her). Mrs W "was on high alert and extremely wary of tipping off any First Direct staff that

she spoke to for fear of losing everything” (paragraph 23).

- In preparation for calls with us, Mrs W was provided with scripts and coaching (paragraph 23). This was clearly very sophisticated, including “live coaching via mobile telephone”, presumably while Mrs W was on calls with First Direct.

First Direct said considering the following points holistically, Mrs W would have suffered the same loss come what may:

- The provisional decision concludes First Direct ought to have prevented the scam on 11 December 2021 (at the time of payment 3). At this point, Mrs W had paid only £2,100 from the First Direct account. It is unrealistic to conclude that it would have been able to prevent Mrs W’s loss at such an early stage. Without the benefit of hindsight (i.e. the knowledge that Mrs W and her family ultimately lost almost £3 million to this scam), it does not consider that it could reasonably have been expected, at the time of payment 3, to have identified the specific scam risk, and to have given Mrs W a warning which would have deterred her from continuing to make the payments.
- Mrs W was under the spell and subject to a significant amount of coaching. The fraudster’s control over Mrs W is likely to have frustrated additional enquiries that it may have made. Whatever warning First Direct might have given on 11 December 2021, it is likely that the fraudster would have been able to persuade Mrs W to continue making the payments (she was conditioned to be suspicious of anything First Direct told her and would not have taken this at face value).
- First Direct was misled by Mrs W in the answers that she gave – this prevented it from giving stronger warnings (particularly at the time of payment 3). This explains why the warnings it provided covered other scam types and why it could not have provided a targeted warning specific to the scam to which Mrs W was falling victim.
- This was an unusual scam type – safe account scams where customers paid their own cryptocurrency accounts were not common in December 2021. It was also unusual that the contact with the fraudster and the payments continued over a sustained period. Most safe account scams involve a much quicker movement of funds from the account.
- The fraudsters were in communication with Mrs W and two family members over a considerable period of time – it was only when the fraudsters failed to attend at Mrs W’s home on 7 February 2022 that Mrs W and her family members realised they had been scammed. Before that time, three separate members of the family were the subject of, and were convinced by, the scam.
- The funds were moved into Mrs W’s account from elsewhere – this is highly significant. Even if it had successfully intervened on 11 December 2021, when only two payments had been made from the First Direct account, it is improbable that this would have unravelled the whole scam, preventing all further loss. At best, this would have prevented the scam being routed through the First Direct account. At that date, the balance of the First Direct account was only c.£174,000. The c.£2.5m which was transferred into, and then out of, the First Direct account after that date would still have been lost to the scam. The fraudsters would simply have adapted the story they fed to Mrs W to persuade her to route the payments from elsewhere (she had, after all, been told that the First Direct account was compromised). It is also likely that Mrs W would have been persuaded to transfer the balance of the First Direct account to another bank account in her own name, with those sums also ultimately being lost.
- There was simply no reason for First Direct to suspect or detect the scale of the scam that was being perpetrated on 11 December 2021 at a time when less than

0.1% of the total payments had been made.

- The provisional decision does not properly consider the above factors in reaching its conclusions. The provisional decision only refers to coaching in only generic terms when concluding that our warnings would have made a difference, rather than the specific coaching that Mrs W says took place – it states that you “don’t think the warnings are particularly direct, personal or clear - which is essential in a safe account scam – particularly so given the level of coaching that’s often involved in this type of scam” (its emphasis).
- However, the coaching was unusually substantial in this case.

### **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, I’m required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

First Direct has raised a number of points in response to my provisional findings. After careful consideration, I’m not persuaded that the arguments presented by the bank, prevent me from determining this complaint in favour of Mrs W on a fair and reasonable basis.

My determination of the complaint is ultimately unchanged. My provisional findings already addressed most of the arguments submitted by First Direct in response to my provisional decision. And Mrs W did not materially object to what I was minded to conclude before. I’ve therefore focused on the key points that are left in dispute.

Those arguments centre around causation. This is a critical deciding factor in this (and every) case. Despite First Direct’s response to my provisional decision, I maintain that the dominant and effective cause of the loss here was the bank’s failure to ask suitably probing questions with regard to the unusual and uncharacteristic payment request of 11 December 2021.

First Direct says it is unrealistic to conclude it would have been able to prevent Mrs W’s loss at such an early stage. It referenced the ultimate losses and said it couldn’t reasonably have been expected to have identified the specific scam risk.

Whilst I do understand why First Direct would so robustly defend this case - I disagree with its stance. I identified this call as the point when I think First Direct could have done more because:

In just a few days prior to the call on 11 December 2021, there were seven large transactions into the account from two different investment houses. The total sum across those seven transactions was £269,200. Although immaterial to my outcome here – I believe the balance First Direct has quoted of “c£174,000” - was the balance of the account *after* the transfer of the £45,000 in question *as well as* the transaction of £48,900 that followed. In any event, 12 months prior to the scam the account regularly had a balance of no more than a few thousand pounds. So, not only was this unusual activity for the account, but these sums were also significant in value and the overall activity suspicious.

Whilst only £2,100 had been transferred to cryptocurrency at the point of the call on 11 December 2021, the call centred around the large, significant and unusual transaction for

£45,000 that had been stopped by First Direct before it processed it. Irrespective of the total losses or the percentage of total loss at this point; £45,000 is a significant sum of money and was certainly unusual for this account based on the previous transaction history.

First Direct appears to have overlooked that *it was* sufficiently concerned about the transaction for £45,000 and whether Mrs W was at risk from financial harm - as it stopped the transaction and asked her further questions before processing it. It did also broadly identify the scam risk here (ie a safe account scam). Indeed, this was what the conversation on 11 December 2021 largely centred on. This suggests to me that First Direct had identified Mrs W was at risk of a safe account scam as early as the third transaction (In fact safe account scam warnings were also covered in one of the calls two days earlier on 9 December 2021).

First Direct mentioned that Mrs W misled bank staff when questioned about the purpose of the payment. And it suggests that, in such circumstances, it prevented it from giving stronger warnings. However, I do not accept that.

It's not in dispute that, during the telephone conversation to execute the payment, Mrs W told First Direct that she was making the payment in connection with an investment. Mrs W did genuinely believe she was moving her money to a safe place under the spell of the scammers. And that she thought First Direct was the point of compromise. This is typical of a safe account scam. I accept bank staff do ultimately have to make decisions based on the information they are given by customers. But, as I said in my provisional decision, First Direct can't, fairly and reasonably, entirely rely on what its customer has told it or always take its customer's selected payment purpose at face value. This is especially so - if it thinks it might have identified a potential safe account scam.

The relevant standards and regulations – plus good industry practice – indicate that a bank does have a duty to protect its customers against the risk of fraud and scams so far as reasonably possible. So, as the financial professionals, it is up to the bank staff to find out enough information about the purpose of the payment in order to make an informed decision. Therefore, the question remains whether First Direct appropriately probed Mrs W based on the information it had available.

In this case, Mrs W was making an out of character and unusual payment. Hence, even though the reason Mrs W gave for the payment was potentially plausible (on the face of things), for the reasons I have given previously, I maintain that First Direct ought fairly and reasonably to have asked further questions, on top of the enquiries already made, in order to satisfy itself that Mrs W wasn't likely to be at risk of financial harm – in all the circumstances of the transaction.

I do accept some of the finer details of this safe account scam were unusual. Such as the money going to cryptocurrency and the involvement of the FCA. And I agree most safe account scams involve a much quicker movement of funds from the account often in a single phone call. But I find many of First Direct's arguments largely irrelevant here – because I think it *had* already identified Miss W was potentially at risk from a safe account scam. I consider further and better questioning would have exposed the finer detail. The fact that this scam didn't take place during one call also means First Direct had multiple opportunities to prevent the scam.

First Direct insists that Mrs W would not have revealed the true reason for the payment even if bank staff had questioned her further, in light of the nature of this scam/level of coaching/distrust of bank staff.

Knowing Mrs W was potentially at risk from a safe account scam and what First Direct – as a banking professional knows about this type of scam - it could have worked on the basis that Mrs W was under a spell/being coached/likely to be suspicious of First Direct staff.

Ultimately, I do think First Direct could have done so much more here. It could have asked more open questions and probed much more – for example it could have asked Mrs W more questions around the purported investment - about the friend and ‘platform’ and where she’d researched the opportunity. Safe account scam victims are often given a cover story or coached through the process – so much more probing was needed to test this cover story.

In cases like this I can’t know for certain what would have happened but, in my view, better questioning about the supposed investment would likely have unravelled this cover story. I say this because I’m not persuaded there was much depth to the cover story Mrs W gave and I’m not persuaded Mrs W would have been able to maintain the cover story beyond the basic premise. After all this wasn’t a genuine investment and money was being moved on from the cryptocurrency wallet into the scammer’s own wallets/fake account. Overall, I am not persuaded that Mrs W would have been able to answer better/further questions plausibly and sufficiently to reassure First Direct that she was not caught up in something untoward. First Direct would and should have been concerned and so, it seems more likely to me that with additional questioning about the payments would have led the story to unravel and thus (along with sufficient warnings) would have led to the scam being uncovered.

In my view, warnings read off a script are unlikely to break the spell. It needed open questioning and engagement with the consumer and engagement with the answers she gave. As I said in my provisional decision, I don’t think the warnings are particularly direct, personal or clear - which is essential in a safe account scam – particularly so given the level of coaching that’s often involved in this type of scam (and specifically given the level of coaching involved here) and the fact the consumer genuinely thinks they are speaking to the bank or, in this case, the FCA.

I appreciate there were unusual aspects to this safe account scam but given First Direct had potentially identified a safe account scam here, I’ve thought carefully about whether the kind of questions that I believe ought fairly and reasonably to have been asked by First Direct would have made a difference.

While it is not up to me or this service to dictate which questions should be asked, I believe First Direct could’ve, for example, explained that scammers can make it look like they are calling from First Direct’s or other trusted organisations’ genuine phone numbers (through number spoofing) – a common feature of this type of scam and exactly what happened here. Or First Direct could have asked open questions such as - *has anyone called you from First Direct’s official number and told you your account is compromised or that First Direct staff are under investigation? If they have – this is a scam. Or have you called the genuine telephone number for the trusted organisation back on a separate line.*

Mrs W had checked the official FCA number, and it did match – through number spoofing. If First Direct had warned her to call any trusted organisation back on a separate telephone – I see no reason why this prompt would not have led to Mrs W calling the FCA – which would have caused the whole scam to have unravelled. Particularly if First Direct had blocked the payment following this call. This important pause would have given Mrs W time to reflect later on when the scammer was not coaching her through the relevant call. Whilst the scammers may have been constantly calling her three times a day, there would have been time for reflection between those calls to think about what she was being told and there would have been time to call the FCA on its official number.

I appreciate First Direct’s argument that it considers Mrs W would just have continued to make the payments from another bank account but given I think better questioning and

warnings would have led to the scam likely being unravelled, on balance, I am not persuaded she would have continued to have made payments from elsewhere.

I accept this is a finely balanced case. But all in all, I am satisfied there were enough 'triggers' to have alerted a responsible regulated bank like First Direct that Mrs W's account was being subjected to unusual and uncharacteristic activity such that there were reasonable grounds to suspect fraud or a scam, and therefore justify a better intervention.

Under these circumstances, I'm persuaded that, if bank staff had sought to establish further details about the transaction, it seems more likely than not, that the scam would have been exposed there and then, thereby preventing any further losses. Mrs W would not have lost the £45,000 and (whilst First Direct would not have realised the scale of the scam at this point) Mrs W wouldn't have been persuaded to send the subsequent payments that were lost thereafter.

As I've noted above, I am required to reach my findings based on what I consider to be fair and reasonable in the circumstances. I have taken account of First Direct's arguments in the context of the causation of the loss. But, considering the evidence available to me through this complaint, I consider it to be fair and reasonable that First Direct shares responsibility for the loss Mrs W incurred in this case.

### **Putting things right**

Mrs W's husband and mother have been added as third parties as some of the funds originated from them. So I want to make them aware of redress.

### **Award limits**

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £375,000 for originating acts and omissions on or after 1 April 2019 (where the complaint was referred to us between 1 April 2022 and 31 March 2023 - as it was here).<sup>1</sup> plus any interest and/or costs/ interest on costs that I think are appropriate.

If I think that fair compensation is more than the limits mentioned above, I may recommend that the business pays the balance.

**Final Decision and award:** I uphold the complaint in part.

In assessing what would be fair compensation, I am satisfied that what I have set out below is fair, reasonable and proportionate given Mrs W's circumstances and objectives. Mrs W received some credits back from the scammer/cryptocurrency wallets and these should be deducted.

I think fair compensation in this case should be calculated as follows:

A = refund all the transactions made to the scam from 11 December 2021 to 2 February 2022 (not including those payments already refunded) and less any credits received from cryptocurrency.

First Direct can reduce A by 50% for Mrs W's share in the losses.

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<sup>1</sup> There are different maximum award limits based on the date of the act or omission by the business, and the date the complaint is referred to us they can be found here <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation>

I feel a complaint could've been brought to the bank and this service without the use of professional advisors. I therefore do not consider it appropriate or fair to make an award for legal costs.

My final decision is that HSBC UK Bank plc trading as first direct must pay Mrs W the amount produced by that calculation – up to a maximum of £375,000.

As Mrs W has been deprived of the use of this money – I consider it fairest HSBC UK Bank plc trading as first direct pay interest\* on the above refund calculated at 8% simple per year from the date the transactions were made to the date of settlement.

**Recommendation:** I think fair compensation is more than £375,000 so I recommend that HSBC UK Bank plc trading as first direct pays Mrs W the balance with interest on that sum at 8% per annum from the date of loss to the date of refund.

This recommendation does not form part of my final determination or award. HSBC UK Bank plc trading as first direct doesn't have to do what I recommend. It's unlikely that Mrs W can accept my final decision and go to court to ask for the balance. Mrs W may want to get independent legal advice before deciding whether to accept my final decision.

HSBC UK Bank plc trading as first direct must pay the compensation within 28 days of the date on which we tell it Mrs W accepts my final decision.

\*If HSBC UK Bank plc trading as first direct considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mrs W how much it's taken off. It should also provide a tax deduction certificate if Mrs W asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint in part and HSBC UK Bank plc trading as first direct needs to put things right for Mrs W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 24 July 2024.

Kathryn Milne  
**Ombudsman**