

The complaint

Mr and Mrs R complain that HSBC UK Bank Plc trading as first direct won't refund money they lost to a cryptocurrency investment scam.

They are being represented by solicitors in this complaint.

As the payments were made by Mr R from his first direct account held jointly with Mrs R, for ease I've mainly referred to him in my decision.

What happened

The full details of this complaint are well known to the parties, so I'll only provide an overview and focus on giving my reasons for my decision.

Between April and June 2023, Mr R made several payments using his first direct debit card in connection with what he understood to be an investment opportunity. But it turned out to be a scam.

Our investigator didn't uphold the complaint. They didn't think the initial payments – first four – looked suspicious such that first direct ought to have made additional checks before processing them. And although they expected the bank to provide a written warning about cryptocurrency investment scams when Mr R attempted a payment for £3,000 on 3 May, the investigator wasn't persuaded that it would have made a difference. They noted that he was familiar with the hallmarks of such scams, having had the same concerns when he made the initial payments, but still decided to continue with the payments.

Mr R's representative has asked for the matter to be referred to an ombudsman. In summary, the representative states that while Mr R did have doubts regarding the investment, he was also impressionable and an effective warning by first direct would have confirmed his doubts.

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 taken into account longstanding regulatory expectations and requirements, and what I consider to be good industry practice, first direct ought to have been on the look-out for the possibility of fraud and made additional checks before processing payments in some circumstances.

I've reviewed Mr R's account and the payments he made to the scam. Having considered when they were made, their value and who they were made to, I'm not persuaded that first direct ought to have found the first four payments suspicious, such that it ought to have made enquires of Mr R before processing them.

The bank did block a payment on 24 April – attempted between payments 3 and 4 – and Mr R was required to phone the bank to discuss it. In their view, the investigator highlighted snippets of the written chat correspondence Mr R had with the scammer at that time. I've since requested and received a recording of the call between Mr R and first direct. He was asked about the payment purpose, and he told the agent that he was sending money to one of his other accounts for home improvement expenses. It's unclear whether Mr R misled the bank on his own volition or because he was coached by the scammer. But I'm satisfied that first direct couldn't reasonably have identified the actual scam risk involved here given Mr R's response.

The investigator thought the payments were clearly identifiable as being cryptocurrency related. But I think that's arguable. The merchant in question offers currency accounts and pre-paid cards in addition to cryptocurrency. So, I don't think it necessarily follows that a cryptocurrency investment scam warning was warranted when Mr R attempted payment 5 on 3 May.

But even if I'm wrong about that, the information I've seen shows that Mr R was already become aware of the common features of cryptocurrency investment scams through his own research following first direct blocking a payment on 24 April. As he continued making payments, likely because of reassurances he received from the scammer, I'm not persuaded that a warning about cryptocurrency investment scams by the bank would have positively impacted his decision making.

Mr R's representative argues that a phone call from first direct on 3 May – the trigger point suggested by the investigator – would have broken the scammer's spell. But I'm not convinced. As I've mentioned, the bank did speak to Mr R on 24 April about the payment that had flagged. The agent also warned him about scammers coaching customers to lie to their bank. We know Mr R had some concerns following this intervention, but these were seemingly alleviated by the scammer; Mr R was willing to obtain loans to fund the subsequent scam related payments.

On balance, I'm not convinced that a further phone call from the bank on 3 May (or at a later stage) would have gone differently. I think it's more likely than not that Mr R would have misled the bank about the true purpose of the payment.

Thinking about recovery next, Mr R exchanged the funds he sent to the recipient account into cryptocurrency before sending it on to external wallets. In the circumstances, recovery is unlikely to have been successful.

In summary, while Mr R has undoubtedly been the victim of a cruel scam, I don't find there were any failings on first direct's part that would lead me to uphold this complaint.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 17 March 2025.

Gagandeep Singh
Ombudsman