

The complaint

Mrs R complains that HSBC UK Bank Plc trading as first direct ("First Direct") won't refund a payment she made as part of a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, I understand it to be as follows.

In July 2020, Mrs R made a payment of £10,000 as part of an investment.

In May 2024, having not received her returns as expected, Mrs R complained to First Direct that she'd been the victim of a scam. She said that First Direct failed to give an effective warning at the time of the payment and that she was vulnerable to such scams; so they should refund her.

First Direct declined Mrs R's complaint on the basis that they processed the payment in line with Mrs R's request. They also stated that, as Mrs R's payment wasn't a faster payment, it wasn't covered by the Contingent Reimbursement Model (CRM) Code. Unhappy with this response, Mrs R's complaint was referred to our service through a professional representative.

An investigator looked into Mrs R's complaint but didn't uphold it. The investigator said they didn't think there was sufficient evidence to demonstrate that Mrs R was the victim of a scam.

Mrs R disagreed with the investigator's findings. In summary, Mrs R explained that she no longer had any of the documentary evidence she received relating to the investment. She further explained that she was very vulnerable at the time of the payment.

As the complaint couldn't be resolved by the investigator it 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.

In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Mrs R's complaint. This is not meant to be a discourtesy to Mrs R and I want to assure her I have considered everything they've submitted carefully.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a bank such as First Direct is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Here it's not in dispute that the payment was authorised, so the starting position is that First Direct isn't liable for the transaction.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

First Direct also has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

Taking these things into account, I need to decide whether First Direct acted fairly and reasonably in its dealings with Mrs R.

Has Mrs R fallen victim to a scam?

The Financial Conduct Authority handbook defines authorised push payment (APP) fraud as:

'a transfer of funds by person A to person B, other than a transfer initiated by or through person B, where:

(1) A intended to transfer the funds to a person other than B but was instead deceived into transferring the funds to B; or

(2) A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent.'

So, in order for me to reach the finding that Mrs R is the victim of APP fraud, I need to determine whether the circumstances surrounding the payments meet the FCA handbook definition of APP fraud.

I accept that Mrs R hasn't received the returns in line with what she was expecting. But, there are often times that legitimate businesses and investments fail. The fact that the investment has performed in the way that Mrs R expected isn't enough to demonstrate that APP fraud has occurred.

I understand that Mrs R no longer has access to the information she received at the time of the investment, and I've not been provided with any other evidence since the time of the investment to show that it was fraudulent. Ultimately, I've not seen any tangible evidence to demonstrate that the investment was fraudulent or that APP fraud has occurred.

Overall, I'm not persuaded that Mrs R has fallen victim to APP fraud as defined by the FCA Handbook, based on the evidence available. Should any material new evidence come to light at a later date that would suggest that Mrs R was the victim of a scam she can ask First Direct to reconsider her fraud claim.

I appreciate this will be disappointing to Mrs R, given the impact this situation has had on her, but I'm unable to say that First Direct are liable to reimburse her loss.

Should First Direct have prevented the payments?

Mrs R also complains that First Direct released her funds without giving an appropriate warning and failed to take her vulnerabilities into consideration when allowing the funds to debit her account.

Mrs R feels that First Direct should've done more to prevent the payment at the time it was being made, given its high value and unusual appearance in contrast with the typical account activity. Based on the evidence available, it's not clear whether the purpose of the payment was discussed or that First Direct asked questions to determine whether Mrs R may be at the risk of financial harm. I'm also unable to see that First Direct provided Mrs R with an effective warning regarding scams prior to the payment being made.

As referenced earlier in my decision, First Direct has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. That said, First Direct has no obligation to protect its customers from bad bargains or poor investment choices.

As I don't believe Mrs R has demonstrated that she is the victim of APP fraud, I'm satisfied that First Direct haven't failed any of their obligations by not intervening and discussing the payment prior to them debiting Mrs R's account or that they're at fault for not providing an effective warning.

I appreciate that Mrs R was experiencing some difficult personal circumstances at the time the payment was made. But, as I'm not satisfied that Mrs R's payment meets the FCA Handbook's definition of APP fraud, I don't think First Direct are at fault by failing to take into consideration any potential vulnerabilities when processing the payment or when considering her request for a refund. Further to this, as I can't see that First Direct were aware of any potential vulnerabilities at the time of the payment, I can't say that they failed in their duty of care to Mrs R with regards to any potential vulnerabilities.

Overall

Based on everything I've seen, I'm not satisfied that Mrs R has fallen victim to APP fraud as defined by the FCA Handbook or that First Direct should be held liable for failing to prevent her loss at the time the payments were being made.

My final decision

My final decision is that I do not uphold this complaint against HSBC UK Bank Plc trading as first direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 26 June 2025.

Billy Wyatt
Ombudsman