

The complaint

Mr F and Miss S have complained that HSBC UK Bank Plc (trading as “first direct”) failed to protect them from falling victim to an investment scam and hasn’t refunded the money they lost.

What happened

The background of this complaint is already known to both parties, so I won’t repeat all of it here. But I’ll summarise the key points and then focus on explaining the reason for my decision.

Mr F and Miss S have used a professional representative to refer their complaint to this service. For the purposes of my decision, I’ll refer directly to Mr F and Miss S, but I’d like to reassure Mr F and Miss S and their representative that I’ve considered everything all parties have said.

Mr F and Miss S say that in May 2018 they invested in bonds in a company, which I’ll refer to as “R”, after responding to an online advert about the opportunity. They say first direct failed to warn them that they could be falling victim to a scam. They explain that they made three payments totalling £420,000 with the promise of 20% returns on their investment within four years.

Although they say they’ve made repeated requests, Mr F and Miss S haven’t been able to withdraw any of the money they invested in R. They say they understand there are also many other people in the same unfortunate situation as them.

Mr F and Miss S say that R’s accounts are still overdue and it is currently in administration. They also say that R is now widely accepted as being a scam.

The payments Mr F and Miss S made as part of the scam were as follows:

Date	Amount
13 July 2018	£200,000
20 July 2018	£100,000
13 November 2018	£120,000
Total	£420,000

Mr F and Miss S made a complaint to first direct on the basis that it failed to fulfil its obligations by allowing them to make the payments without taking any measures to protect them from fraud or scams. First direct didn’t uphold the complaint, and in its response it said it wasn’t responsible for refunding the payments under the industry’s Contingent Reimbursement Model (“CRM”) Code because that was introduced in May 2019, after the payments were made. It also set out that it believed the scenario more closely represented a civil dispute between Mr F and Miss S and R, rather than a scam. Finally, it said it had given Mr F and Miss S fraud warnings during telephone calls before the payments were released.

Mr F and Miss S remained unhappy so they referred the complaint to this service. In their response they set out that they're seeking reimbursement of the £420,000 that they've lost, plus 8% interest and £1,000 in recognition of the poor service they've received from first direct.

Our investigator considered everything and didn't think the complaint should be upheld. She explained she hadn't seen any information to suggest that Mr F and Miss S had in fact lost money to a scam. Although she didn't doubt Mr F and Miss S had lost what they invested and hadn't been able to recover it, she said the company had gone into liquidation and the former company owner still intended to refund investors using proceeds from his new company. As she didn't think there was evidence to suggest Mr F and Miss S had been scammed, she said that even if first direct had warned them about scams at the time, it's likely they'd still have made the payments as there was nothing suspicious about them.

As Mr F and Miss S didn't accept the investigator's opinion, the case has been passed to me to make 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.

I'm sorry to disappoint Mr F and Miss S but having considered everything I'm afraid I'm not upholding their complaint, broadly for the same reasons as our investigator, which I've set out below.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And in this case it's not in question whether Mr F and Miss S authorised these payments from leaving their account. It's accepted by all parties that Mr F and Miss S gave the instructions to first direct and first direct made the payments in line with those instructions, and in line with the terms and conditions of Mr F and Miss S's account.

But that doesn't always mean that the business should follow every instruction without asking further questions or intervening to ensure requests coming from their customers are firstly genuine, and secondly won't result in harm.

The payments made by Mr F and Miss S were unusual and out of character for their account. Given this, it was appropriate for first direct to intervene and carry out additional checks before processing them. First direct spoke on the phone with Mr F and Miss S before all three payments were released. I've listened to recordings of the calls and although I haven't transcribed them fully, I've included a summary of them below.

13 July 2018 – £200,000 payment

In this call Mr F called first direct to arrange the payment of £200,000 to R. During the call, the representative gave Mr F a warning about the risk of fraud, advising Mr F to ensure that the person requesting the payment was genuine and to double-check the account details. Mr F confirmed that he had received the payment details via email but had also called the company directly to verify them. He explained that the payment was for an investment in a high-interest bond. Given the large amount and that it was a first-time payment to this company, first direct arranged a call back as an extra security measure before processing the transaction. Following this the payment was released.

20 July 2018 – £100,000 payment

Mr F called again to make a second payment of £100,000 to the same payee, R. He confirmed that the funds from his previous payment had arrived successfully. First direct verified the sort code and confirmed it belonged to the correct bank before proceeding with the payment.

13 November 2018 – £120,000 payment

On this occasion, Mr F was asked to reconfirm the bank details with the company to ensure they hadn't changed since receiving the original email. He confirmed that he had called the company using a verified contact number and was satisfied the details were correct. Mr F also confirmed he was purchasing a bond and had previously invested with the company. Based on this, the £120,000 payment was released.

Having listened to these calls I'm satisfied first direct took some steps to ensure Mr F was aware of the risks, provided clear guidance, and carried out appropriate checks before processing the payments. Whilst first direct could have given more specific warnings about investment scams, such warnings are usually tailored to situations where there are red flags indicating potential fraud. In this case, the investment didn't have any of the typical scam characteristics, so it's unlikely that additional warnings would've changed Mr F and Miss S's decision on whether to make the payments, or would've uncovered any fraudulent activity.

Mr F and Miss S have said that it's widely accepted that their investment was a scam. But the evidence they've provided, such as news articles and online discussions, is dated after they made the decision to invest, and suggests that the R didn't perform as expected rather than being fraudulent. Additionally the investment literature they've provided doesn't display any clear indicators of fraud, so if first direct had reviewed this documentation at the time, it's unlikely it would've found anything that raised suspicion.

At the time the payments were made, there were no warnings or alerts issued by regulatory bodies such as the Financial Conduct Authority (FCA) or the International Organisation of Securities Commissions (IOSCO). As a result, it's unlikely first direct would've had any information available to suggest the investment was potentially fraudulent, and that it therefore should've done more to intervene to protect Mr F and Miss S.

Finally, Mr F and Miss S initiated contact to make the investment themselves. They weren't approached unexpectedly or subjected to high-pressure sales tactics, which are common features of investment scams. Given this context, the circumstances don't resemble the typical pattern of fraud that banks are expected to detect.

Having considered everything I fully accept that the loss of Mr F and Miss S's money wasn't their fault, and I appreciate how distressing this situation must be for them. But it's important to clarify that whilst things didn't turn out as they'd expected, this doesn't necessarily mean that they were the victims of a scam. The investment they entered into didn't materialise in the way they expected, but this also doesn't indicate a failure on the part of first direct, as I wouldn't expect it to give financial advice or assess the viability of an investment in terms of potential returns or performance. And although I think its warnings could've been more robust, I don't think that would've prevented Mr F and Miss S from investing.

I haven't concluded that first direct failed in its duty or missed an opportunity to prevent a scam. So I'm sorry to disappoint Mr F and Miss S but I don't hold first direct responsible for the money they've unfortunately lost.

My final decision

I don't uphold Mr F and Miss S's complaint against HSBC UK Bank Plc trading as first direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Ms S to accept or reject my decision before 26 February 2025.

Sam Wade
Ombudsman