DRN-5038607

The complaint

Mr P is unhappy that HSBC UK Bank Plc trading as first direct ("First Direct") won't reimburse money he lost to a scam.

What happened

The background to this complaint has been set out in some detail by our investigator. I won't repeat it all here.

Briefly I understand that:

- Mr P's mother ("J") had been contacted by investment fraudsters in 2022. She believed that she was being assisted to trade in cryptocurrency. She'd seen her investment grow between then and July 2023, when she suggested the investment to Mr P.
- J offered to fund Mr P's initial investment and that of his close friend. J's other son had also become involved in the investment earlier in 2023.
- Mr P made payments from his bank account at another bank ("N") and from an account with an Electronic Money Institution ("R") that was set up as part of the scam. Mr P says that N questioned him about the purpose of the payments he made from that account and R asked him about the source of his funds.
- On 13 August 2023 he set up a First Direct account after being advised by the fraudster that it was easier to purchase cryptocurrency using the account.
- On 17 August 2023 he made a £9,800 debit card payment to a well-known cryptocurrency provider ("the 17 August Payment"). First Direct stopped that payment and had a conversation with Mr P. That conversation will be discussed in more detail later in this decision.
- Following that call, Mr P made payments totaling around £70,000 from his First Direct account, largely to pay various fees and charges to release his investment. First Direct spoke to Mr P on several more occasions during this period. He was generally honest about what he was doing – purchasing cryptocurrency to trade with the help of a 'financial advisor'.
- But, after being told he'd exceeded First Direct's limits on sending cryptocurrency, he appears to have disguised several peer-to-peer cryptocurrency purchases by labelling them as being payments to a builder or for an invoice (and providing an inaccurate payment reason when asked).
- First Direct eventually blocked his account. Mr P reverted to making payments from N but after a conversation with it, the scam was revealed.
- Mr P complained to First Direct about its failure to prevent the scam. It said it had sufficiently warned him about the risk and wasn't responsible.
- It declined his claim but was able to recover £12,955.25 which was returned to Mr P.
- Mr P referred the complaint to our service and our investigator upheld it in part. They

thought that during the call on 17 August 2023 First Direct failed to pick up on obvious red flags and the scam could have been prevented. However, they also thought that Mr P should bear some responsibility for the loss. They recommended that First Direct should refund half of Mr P's outstanding loss.

- Mr P didn't make any further submissions but First Direct didn't agree. It said that it had warned Mr P multiple times about the scam risk, he had misled it about the purpose of some of the payments and it doesn't think that a better intervention would have prevented the loss because of the 'evidence' Mr P had seen of his mother's success.

As no agreement could be reached the case was passed to me for a final 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 broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account.

However, that isn't the end of the story. Good industry practice required that First Direct be on the lookout for account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to take steps to protect its customer. The extent of that warning should be proportionate to the risk the payment presents and strike a balance between trying to protect customers and not unduly inconveniencing them.

It's clear that First Direct thought that the 17 August Payment carried some risk of financial harm from fraud – that's why it stopped it to perform checks. I think it was right to do this – Mr P was making a large payment to a high-risk cryptocurrency merchant.

So I've considered whether First Direct's intervention was sufficient and, if it wasn't, whether any additional proportionate questions would have brought the scam to light.

Mr P was largely, but not completely, open about the reason for the payment during that call. The circumstances he described closely matched those of a very common scam:

- He was trading in cryptocurrency by purchasing it from a legitimate platform before passing it to an unregulated trading platform.
- He was being guided by a 'financial advisor', who would tell him which trades to make. He simply had to confirm agreement or otherwise.

Had First Direct asked more questions, I think it probably would have learnt that:

- The returns that J believed she had made were astronomical and were unlikely to have been achieved through legitimate trading (apparently J had made over £1,000,000 in August 2023 from a total investment of £70,000 over around a year).
- The financial 'advisor' was not independent or regulated – they were working for the trading platform.

While First Direct did mention the risk of cryptocurrency scams in general terms, it did not (in the 17 August 2023 call or any that followed) recognise that what Mr P was telling them bore a very strong resemblance to a cryptocurrency investment scam. I'm satisfied that with a little more probing, it should have advised that there was a strong chance that Mr P was falling victim to a scam. It didn't.

So, I've considered what might have happened had First Direct provided such a warning. I've noted that Mr P was not always open with N about the purpose of his payments. He also disguised some of the payments he made from First Direct to conceal the fact they were going to a cryptocurrency provider. But otherwise he was quite open about what the payments were for and the circumstances surrounding them. The obvious explanation for this is that Mr P was attempting to circumvent the restrictions the banks had on cryptocurrency purchases. A good example of this is when Mr P called First Direct on 22 August 2023 to inform it that he intended to purchase cryptocurrency. It told him that the intended purchase would exceed the bank's limits on cryptocurrency purchases and it wouldn't make the payment. So, instead, he made peer-to-peer cryptocurrency purchases with the reference 'builder' (First Direct would not have been able to link these payments to cryptocurrency).

This is an important point. Mr P's motivation in concealing the purpose of the payment was not, in my view, a mistrust of the bank (or any warnings it might provide). In fact, despite the frequency of his interactions with First Direct during this period, Mr P remained amiable, forthcoming and appreciative of its efforts. I don't get the impression he was unwilling to listen to a tailored and impactful warning that ought to have reflected the circumstances he found himself in.

First Direct puts weight on the claim by Mr P that he'd seen evidence of his mother's return in her bank account. He made this claim during the call on 17 August 2023 and in his submissions to our service he said that his mother had 'seen' very large payments credit her bank account (that disappeared the following day).

I've clarified this point with Mr P. It appears that these phantom credits were the result of some trickery by the fraudster using remote access (likely simply manipulating J's internet banking statement). Mr P hadn't seen these payments and was only relying on J's word that they had taken place. The chronology on this isn't entirely clear either. J says that these credits didn't take place until September 2023, Mr P claims they took place in July 2023.

While it's not clear which date is right, in neither case could Mr P actually have seen these returns. At most, he would have seen J's trading account balance or heard J's claim that she'd been able to withdraw funds (albeit they had disappeared the following day and J claimed they were being held by her bank). That doesn't change the fact that Mr P made this claim during the call. But, again, I think, with a stark warning and some gentle probing, the truth would have come to light – that J (who was in her nineties at the time) hadn't actually been able to withdraw money back to her account.

I also recognise that Mr P reverted back to making payments from N after First Direct blocked multiple payments he was attempting to make in September 2023. I agree that this shows persistence, but the fact remains that Mr P did this without First Direct having provided a warning of the type I've described. It does not demonstrate that he would have continued making payments despite such a warning.

I think this is a finely balanced matter but the fact that First Direct failed to appropriately recognise the hallmarks of a very common scam and provide a clear and impactful warning necessarily puts it on the back foot. And while there are reasons to suggest Mr P would have been reluctant to accept the possibility that his family had been taken in by the fraudsters, that's not enough to persuade me that Mr P would have proceeded with the payment despite such a warning.

I've also thought about Mr P's role in what happened and whether he should share responsibility for the loss. In doing so I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

My impression is that the fraudster in this case was a persuasive and credible individual and, like other scams of this nature, the fraudsters utilised legitimate trading software to carry out the fraud. This was not an unsophisticated enterprise. I note that, unusually, the fraudster even agreed to (but ultimately excused themselves from) an in-person lunch with Mr P and his family.

But I am struck by how much faith Mr P put in his mother and how little he did to verify the fraudster. That's particularly true when J was under the impression she'd made the sort of returns I outlined earlier in this decision and hadn't been able to withdraw any money. Had he done some cursory searches online, I don't think he would have found very much to reassure him or very much at all about the fraudulent trading platform.

Later in the scam – after 17 August 2023 – events took a less plausible turn with Mr P believing he'd made £240,000 but would need to pay 10% of that amount 'through the account' of a cryptocurrency provider in order to receive his funds. I appreciate at this point Mr P was likely desperate to recover his investment, but I think this should have caused him significant concern, which might have prompted him to check with the genuine cryptocurrency provider to see if the request had really come from them.

Overall, considering Mr P's conduct throughout the scam, I think that Mr P should share responsibility for the loss.

Finally, I've thought about First Direct's attempts to recover Mr P's funds. I can see that it contacted all of the banks involved (albeit the day after he reported the scam) but was only able to recover a proportion of his money. While First Direct might have acted a little more quickly, I think it's unlikely that it would have been able to recover any more money – given that most of the payments were sent to cryptocurrency platforms and converted into cryptocurrency before being sent to the fraudster.

Putting things right

I've calculated Mr P's outstanding loss from his First Direct account to be £61,889.12 (that is the total of the successful payments minus the credits he received). First Direct should pay half of that amount - £30,944.56.

In relation to interest, I understand that the payments were funded from a variety of sources – Mr P's own money and money sent to him by his wife and mother. Mr P says that the money from his mother was a gift, rather than a loan and, without specific evidence to the contrary and given their close relationship I think it's reasonable to treat the money he received from his wife in the same way. Consequently, and noting that First Direct have not made any submissions on this point, I think that it should pay 8% simple interest on the amount being reimbursed, from the date of each payment to the date of settlement.

My final decision

I uphold this complaint and direct HSBC UK Bank Plc to reimburse Mr P:

- 50% of the outstanding loss from the disputed payments – an amount I calculate to be £30,944.56.

- 8% simple interest per year on that amount from the date of each payment to the date of settlement[1].

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 April 2025.

Rich Drury
Ombudsman

[1] If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.