

The complaint

Mr B has complained that HSBC Bank UK Plc (trading as “first direct”) failed to protect him from falling victim to a cryptocurrency-related investment scam.

What happened

Mr B has used a professional representative to refer his complaint to this service. For the purposes of my decision, I’ll refer directly to Mr B, but I’d like to reassure Mr B and his representative that I’ve considered everything both parties have said.

I recognise Mr B has made complaints about different financial businesses in connection with the same scam. In this decision I’ll only comment on the allegations against first direct. We’ll address Mr B’s concerns about the other businesses separately.

Mr B has explained that around May 2024 he was introduced to an investment opportunity in an online advertisement. Mr B says he was convinced by the advert as it appeared to be endorsed by two celebrities, so he expressed an interest, and he was then contacted by an individual (“the scammer”) claiming to be an account manager. He was given access to an investment platform, which the scammer explained to him, and he was told he’d invest by exchanging pounds for cryptocurrency, which he’d then forward on to the scammer, allegedly to fund his investment. He’s described the investment platform as highly professional and he says his interactions with the scammer were of a particularly high standard, so he was convinced that it was a legitimate company and investment. As a result he says he started by investing \$200.

The payments Mr B made as part of the scam were as follows:

Date	Amount (£)	Type
02/04/2024	158.64	\$200 debit card to merchant “S”
04/04/2024	1,000	Overseas payment to crypto platform
20/05/2024	1,000	Bank transfer to crypto platform
20/05/2024	2,500	Bank transfer to crypto platform
21/05/2024	2,400	Bank transfer to crypto platform
21/05/2024	2,100	Bank transfer to crypto platform
31/05/2024	500	Bank transfer to crypto platform
31/05/2024	1,000	Bank transfer to crypto platform
31/05/2024	2,000	Bank transfer to crypto platform
31/05/2024	2,100	Bank transfer to crypto platform
31/05/2024	2,000	Bank transfer to crypto platform
31/05/2024	2,000	Bank transfer to crypto platform
03/06/2024	2,500	Bank transfer to own account
04/06/2024	7,500	Bank transfer to own account
06/06/2024	5,500	Bank transfer to own account
14/06/2024	+79.32	50% refund of transaction 02/04/2024
Remaining loss	34,179.32	

Mr B says he realised he'd been scammed when he received several requests to pay fees, and a £5,000 insurance payment, which he refused to pay. He reported this to first direct on 12 June 2024.

Mr B made a complaint to first direct in which he said that if it had gone further to provide caution and advice related to scams, he'd have been aware of the scams that often take place. First direct didn't uphold Mr B's complaint, as it said the payments weren't unusual for his account. It also said that it had stopped the payments for £2,500 on 20 May 2024 and £7,500 on 4 June 2024 to ask Mr B questions before they were released. It said Mr B reassured it he was confident he was sending the payment of £2,500 to a legitimate recipient, and that he was sending the payment for £7,500 to his account at another bank to pay expenses related to his property overseas. First direct also noted that it had refunded 50% of the debit card payment to merchant S, totalling £79.32.

Mr B remained unhappy so he referred the complaint to this service.

Our investigator considered everything and didn't think the complaint should be upheld. She explained she thought that first direct had asked proportionately probing questions during the call on 20 May 2024 with Mr B, but he hadn't been truthful with his answers. She also said she didn't think any further payment blocks or interventions would've stopped Mr B from making the scam-related payments, as he'd made some using other means such as by first transferring the funds to another of his own accounts, and then forwarding them on to purchase cryptocurrency.

As Mr B 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 B but having considered everything I'm afraid I'm not upholding his 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 B authorised these payments from leaving his account. It's accepted by all parties that Mr B 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 B'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.

I've started by reviewing the account activity on Mr B's account in the months before the scam took place. And having done so, I'm satisfied that the payment for £2,500 on 20 May 2024 is the point at which first direct ought to have been on alert that Mr B may've been falling victim to a scam. Whilst there are two payments before this one that are identifiably being made to cryptocurrency, those payments are for fairly modest amounts (£1,000) and they were made around six weeks apart. Although the cryptocurrency arena is well-known for its relation with scams, it doesn't automatically follow that all cryptocurrency-related payments are indeed fraudulent, and first direct needs to balance that fact with its duty to protect its customers.

Mr B made the second payment to the cryptocurrency platform (payment 4 above) on the same day as the first, and it was for more than double the size of the first payment. As the payee's name entered meant the payment was easily identifiable as being sent to a cryptocurrency platform, as a minimum I'd have expected first direct to give Mr B a relevant written warning, covering off the general risks associated with cryptocurrency scams.

First direct didn't send the payment immediately, and it contacted Mr B to let him know it needed to discuss the payment with him before it could be released. I've listened to that call and although I'm not going to transcribe it word-for-word, I've included a summary of it below.

The call starts with first direct explaining that it needs to verify the payment of £2,500 to the cryptocurrency exchange. It confirms that Mr B made the payment himself, and gives a warning that scammers often pose as legitimate organisations such as first direct, or the police. It also gives Mr B some generic security information related to not releasing certain information by phone.

First direct then asks Mr B whether he's been guided on how to answer first direct's questions, whether he's been asked to move his money to a safe account, or whether he's been asked to download remote access software on to his devices, and he answers "no" to all three questions.

First direct then checks how Mr B received the details of the account he was sending money to, and he confirms he has an account with the cryptocurrency exchange and the funds he's sending are being sent to that account. He's then advised that scammers will sometimes guide individuals to open an account elsewhere and make a payment to it, and he's told that if he's been guided on how to make an investment this could be a scam.

First direct then asks Mr B what attracted him to purchase cryptocurrency, to which he responded that "I just thought I'd give it a go". He then confirms he was fairly new to using this cryptocurrency exchange, but confirms he's satisfied with it. He's then told by first direct that this could be a scam, and scammers sometimes convince individuals to make payments with the promise of high returns, and that scammers advertise fake investments and sometimes use fake celebrity endorsements. Finally, he's warned that cryptocurrency isn't regulated by the Financial Conduct Authority (FCA) and directed to verify the company he's dealing with on the FCA's website.

After confirmation that Mr B still wishes to make the payment first direct releases it and the call ends.

Having considered the content of this call, I'm satisfied that first direct did more than I'd have expected it to do here to ensure Mr B was aware of the risks associated with cryptocurrency investments. Mr B wasn't entirely truthful in his answers to first direct, as he had indeed been asked to make the payment by his "account manager" at the alleged investment company, and he didn't disclose the real reason he'd been attracted to purchasing cryptocurrency in the first place. It's also important to note that the scenario described by first direct, whereby scammers invent fake investments and use false celebrity endorsements, closely resembles the scam that Mr B has described, so this should've resonated with him but he chose not to disclose information that would've been helpful and relevant to allow first direct to protect him.

During this call first direct provided robust warnings and real-life examples of scams similar to this one, but Mr B still chose to proceed. With this in mind I'm satisfied that no matter how

many more times – or how well – first direct had intervened, Mr B would've shown the same determination to make the payments, and the scam wouldn't have been uncovered.

I've noted that Mr B told first direct in the call on 4 June 2024 that he was making the £7,500 payment to one of his other accounts to fund his property in Spain. I haven't been provided with a copy of that call, but I can see Mr B in fact forwarded the £7,500 to his account at another bank, and he's now complained that payment was also part of the scam. This further persuades me that even if first direct had done more to intervene at any point in this chain of payments, it's unlikely Mr B would've been honest with it, so its attempts to uncover and halt the scam would've been unsuccessful.

Recovery of the funds

As the first payment was made by debit card the chargeback process is relevant here. The chargeback scheme is a voluntary agreement between card providers and card issuers who set the scheme rules and is not enforced by law.

I'd only expect first direct to raise a chargeback if it was likely to be successful, but based on the available evidence this doesn't look like a claim that would have been successful. Mr B paid a legitimate cryptocurrency exchange, and in return he received a service from the cryptocurrency exchange whereby it exchanged his money into cryptocurrency, before Mr B sent it to the wallet address of the scammer. Considering this, the cryptocurrency exchange provided the service it should have by providing the cryptocurrency, so Mr B's disagreement is with the scammer, not the cryptocurrency exchange. So I don't think a chargeback claim had a reasonable prospect of success. I do however note that first direct gave Mr B a 50% refund of this payment.

First direct says it attempted to recover any remaining funds of the £1,000 payment made on 4 April 2024, but it was advised by the recipient's bank that no funds remained in the account.

In relation to the remaining payments to the cryptocurrency platform, I'm not aware that first direct attempted to recover those. But as they were made available to Mr B in his cryptocurrency wallet, and he exchanged them for cryptocurrency which he then sent on to the scammer, first direct wouldn't have been able to recover the funds in any case.

Finally, I wouldn't have expected first direct to attempt to recall the final three payments, as they went to Mr B's own accounts held with other banks.

I'm very sorry that Mr B has fallen victim to this scam and I do understand that my decision will be disappointing. But for the reasons I've set out above, I don't hold first direct responsible for that.

My final decision

I don't uphold Mr B's complaint against HSBC Bank UK Plc, trading as first direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 December 2024.

Sam Wade
Ombudsman