

## **The complaint**

Mr and Mrs L complain that HSBC UK Bank Plc trading as first direct ("First Direct") hasn't protected them from losing money to a scam.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mr and Mrs L have explained that in February 2024 they made six transfers totalling £59,100 from their First Direct account as a result of a safe account scam. Ultimately, First Direct didn't reimburse Mr and Mrs L's lost funds, and they referred their complaint about First Direct to us. As our Investigator couldn't resolve the matter informally, the case 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.

Having done so, I've decided to not uphold Mr and Mrs L's complaint for materially the same reasons as our Investigator.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focused on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

First, let me say, I don't doubt Mr and Mrs L have been the victims of a cruel scam here. They have my heartfelt sympathy. Ultimately, however, Mr and Mrs L have suffered their loss because of fraudsters, and this doesn't automatically entitle them to a refund from First Direct.

The Payment Systems Regulator's APP scam reimbursement (ASR) rules are new rules that have been implemented to reimburse consumers who are the victims of scams in certain circumstances. However, these were introduced on 7 October 2024 and aren't retrospective, so they don't apply to this case where Mr and Mrs L's payments were made before then. Likewise, the Contingent Reimbursement Model (CRM) is voluntary code introduced in 2019 also to reimburse consumers who are the victims of scams in certain circumstances. However, this doesn't apply in circumstances like this where the payments were made to Mr L's own account (with a third-party payment service provider) as they were here. Still, there are other various and longstanding expectations of payment service providers like First Direct to be alert to fraud and scams and to act in their customers' best interests. However, it would only be fair for me to tell First Direct to reimburse Mr and Mrs L their loss (or part of it) if I thought First Direct reasonably ought to have prevented the payments (or some of them) in the first place, or First Direct unreasonably hindered recovery of the funds

after the payments had been made; and if I was satisfied, overall, this was a fair and reasonable outcome.

I'm satisfied Mr and Mrs L authorised the relevant payments. First Direct would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Mr and Mrs L are presumed liable for the loss in the first instance, in circumstances where they authorised the payments. That said, as a matter of good industry practice First Direct should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect First Direct to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds).

In this case, I understand First Direct didn't intervene in any of these payment instructions, when I think it reasonably should have. However, one has to be reasonable and proportionate about things. Mr and Mrs L had previously made a large payment to this same account in genuine circumstances. So at the time of these payments in February 2024, this wasn't a new payee they were paying – but an account held in Mr L's own name with a third-party payment service provider. This doesn't mean First Direct automatically shouldn't have intervened, not least because I'd expect First Direct to be aware of multi-stage scams where payments pass through a number of accounts before arriving with the scammers. But it does mean I wouldn't have expected an interrogation from First Direct. Instead, I think it would have been reasonable for First Direct to ask Mr and Mrs L some basic questions about the payment(s) and to have provided appropriate fraud and scams warnings and advice based on how Mr and Mrs L answered.

I've thought really carefully about this, especially bearing in mind that when Mr L called and spoke to First Direct on 9 February 2024, after he'd made the payments, that the scam was uncovered during that call. However, this doesn't necessarily mean that this is what would have happened if First Direct had intervened in any of the payments at time they were made (before this). And here, I know Mr and Mrs L will be really disappointed, but I think the weight of evidence is such that it appears most likely that Mr and Mrs L were so under the spell of the scam and the scammers that they likely wouldn't have divulged to First Direct, if it had intervened in any of the six payments, the real reason for the payments or given First Direct any reason to be concerned based on what they said. I say this because I understand Mr and Mrs L have said how convincing the scam was – because their son really was intending to go to the phone shop that day. Mr L has also described how one of the fraudsters said he could google him and look at his professional social media profile which Mr L saw showed he'd worked for First Direct for 16 years. Mr L has also described how the fraudsters persuaded them that there was an ongoing confidential investigation that would involve the Metropolitan Police and that they would need to follow the steps requested exactly according to their instructions in order to avoid "tipping off" those being investigated. It's also evident, as the parties are aware, that after these payments were sent to Mr L's account held with a third-party payment service provider, that this payment service provider intervened in payments Mr L then instructed out of that separate account but unfortunately Mr L followed the fraudsters' instructions, wasn't honest, said he wasn't being guided by anyone else, and tricked that payment service provider into thinking his payments were for genuine home renovations and that everything was fine. I know Mr L only did so because he'd been tricked, and he has my heartfelt sympathy. But I hope Mr and Mrs L will understand why, in circumstances like this, I think it's most likely, had First Direct intervened in the payments, that at those times, it's more likely than not that Mr and Mrs L wouldn't have been upfront with First Direct. The professional scammers would most likely have had instructions and cover stories ready to feed them. Such that I'm not persuaded I can say

First Direct ought fairly be held responsible for Mr and Mrs L making and losing these payments.

I'm also not persuaded First Direct unreasonably missed an opportunity to recover the funds after the payments had been made. This is because the payments were sent to Mr L's own account with a third-party payment service provider and were then sent on from there to the fraudsters' accounts. And I can see that even if First Direct had acted to freeze the recipient accounts immediately on contact from Mr L on 9 February 2024 as Mr and Mrs L have suggested it should have, I can see from information I've seen regarding the fraudsters' accounts and the speed at which they spent the funds, that First Direct still wouldn't reasonably have been in time to prevent the spending of the funds from the recipient accounts and the loss of this money. So I can't fairly say First Direct unreasonably missed an opportunity to recover the funds.

I'm sorry Mr and Mrs L were scammed and lost this money. But despite my natural sympathy, I can't fairly tell First Direct to reimburse them in circumstances where I'm not persuaded it reasonably ought to have been able to prevent the payments or to have been able to recover them.

### **My final decision**

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 25 September 2025.

Neil Bridge  
**Ombudsman**