

The complaint

Mr S complains about HSBC UK Bank Plc trading as First Direct.

He says that First Direct didn't do enough to protect him when he became the victim of a scam and would like it to refund him the money he has lost.

What happened

Mr S unfortunately fell victim to a cryptocurrency investment scam – the details of which are set out in my provisional decision which is attached.

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 have previously issued a provisional decision, explaining that I thought that First Direct didn't do enough to protect Mr S from the scam he fell victim to.

Both parties replied to my provisional decision. Mr S accepted my findings, but while First Direct agreed in principle the outcome I had reached, it wanted to reduce the amount of compensatory interest I was minded to award Mr S. It said this was because;

- Mr S previously held his funds in a non-interest-bearing account
- Mr S continued to pay funds to the scam after he had become suspicious, and so was careless with his money
- The case has been waiting for so long for a final decision.

Instead, it offered to pay Mr S 4% interest on the amount from the date it declined his claim.

However, while I am mindful that the funds may have been held in such an account, our standard approach to interest awards is also to compensate for the deprivation of those funds – not just to match where the funds were originally held.

I have also already taken into account that Mr S's continued to make payments after he became suspicious of the scam in my previous provisional decision, which is the reason for the shared responsibility of a portion of the loss.

Finally, while I understand the case has been with this Service for a long time, it was a complex and finely balanced case which is not the fault of Mr S, and I do not feel it would be fair to reduce his compensation for reasons outside of his control.

Therefore, I see no reason to depart from my provisional decision. I have set out the remedy below.

Putting things right

First Direct should refund Mr S 100% of payments 5-9 of the initial scam, plus fees charged. I calculate this to be £16,322.89 in transactions and £155.78 in transaction fees.

First Direct can deduct £140 from this amount, which Mr S received back from the scammer.

First Direct should also refund Mr S payments 1 and 2 from the recovery scam. I calculate this to be £2,397.48.

First Direct should also refund Mr S 50% of payments 3-64 of the recovery scam. I calculate this to be £97,682.54.

On top of this, First Direct should also pay Mr S 8% simple interest from the date of each transaction to the date of settlement (minus any lawfully deductible tax).

My final decision

HSBC UK Bank Plc trading as First Direct should put things right as set out in my provisional decision – attached to this, my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 December 2024.



Claire Pugh

Ombudsman

Provisional Decision

Mr S was added to a messaging group where individuals were discussing trading in cryptocurrency. He says that the group had over 100 members who were discussing positive stories about their investments and how well they were doing.

After observing the group for some time, Mr S messaged one of the administrators of the group to ask how he could also make money in this way. He was then provided with a link to a website and given instructions of how to set up his own trading account with the company 'C' and set up his own password, leading him to believe that he had sole control, and asked to provide identity documents.

Mr S was then instructed to purchase genuine cryptocurrency and pay this to C, which would then show on his trading account. He made the following payments.

Payment	Date	Payment type	Amount	Fee
1	03/01/2023	Debit card	£874.17	£24.04
2	04/01/2023	Debit card	£878.79	£24.17
3	09/01/2023	Debit card	£2,637.48	£72.53
4	11/01/2023	Debit card	£880.82	£24.22

5	12/01/2023	Debit card	£4,400.00	
6	13/01/2023	Debit card	£3,056.76	£84.06
7	13/01/2023	Debit card	£3,800.00	
8	16/01/2023	Debit card	£2,607.89	£71.72
9	16/01/2023	Debit card	£2,457.24	
		Total	£21,593.15	£300.74

However, Mr S had fallen victim to a scam, which he realised when he asked how he could withdraw his profits, and the scammers cut contact.

Desperate to try and recover his lost funds, Mr S sought out a company online who said they could help. Unfortunately, this was also a scam – and Mr S went on to pay out significant amounts of money for what he thought was part of a retrieval process.

The following payments were made to this part of the scam.

Payment	Date	Payment Type	Amount
1	06/02/2023	Debit card	£343.66
2	06/02/2023	Debit card	£2,053.82
3	06/02/2023	Debit card	£1,385.62
4	06/02/2023	Debit card	£657.97
5	06/02/2023	Debit card	£438.64
6	06/02/2023	Debit card	£438.64
7	06/02/2023	Debit card	£526.38
8	06/02/2023	Debit card	£1,096.73
9	06/02/2023	Debit card	£350.92
10	07/02/2023	Debit card	£2,022.02
11	07/02/2023	Debit card	£1,758.45
12	10/02/2023	Debit card	£1,316.06
13	10/02/2023	Debit card	£3,256.45
14	13/02/2023	Debit card	£1,321.16
15	13/02/2023	Debit card	£1,401.42
16	16/02/2023	Debit card	£2,198.69
17	27/02/2023	Debit card	£877.86
18	27/02/2023	Debit card	£2,631.20
19	02/03/2023	Debit card	£436.88
20	02/03/2023	Debit card	£878.77
21	06/03/2023	Debit card	£883.38
22	06/03/2023	Debit card	£878.02
23	06/03/2023	Debit card	£878.02
24	06/03/2023	Debit card	£1,317.04
25	06/03/2023	Debit card	£1,317.04
26	06/003/2023	Debit card	£439.02
27	20/03/2023	Debit card	£1,760.55
28	20/03/2024	Debit card	£2,629.90
29	24/03/2023	Faster payment	£2,000.00
30	24/03/2023	Faster payment	£4,500.00
31	24/03/2023	Faster payment	£5,000.00

32	24/03/2023	Faster payment	£5,000.00
33	24/03/2023	Debit card	£1,557.84
34	25/03/2023	Faster payment	£2,500.00
35	27/03/2023	Debit card	£2,161.01
36	27/03/2023	Debit card	£2,591.39
37	30/03/2023	Faster payment	£3,350.00
38	30/03/2023	Faster payment	£1,500.00
39	31/03/2023	Faster payment	£5,000.00
40	31/03/2023	Faster payment	£4,999.00
41	31/03/2023	Faster payment	£4,300.00
42	01/04/2023	Faster payment	£4,250.00
43	01/04/2023	Faster payment	£6,600.00
44	01/04/2023	Faster payment	£1,900.00
45	03/04/2023	Faster payment	£3,600.00
46	03/04/2023	Faster payment	£6,000.00
47	03/04/2023	Faster payment	£5,999.00
48	04/04/2023	Faster payment	£6,300.00
49	04/04/2023	Faster payment	£800.00
50	04/04/2023	Faster payment	£6,500.00
51	05/04/2023	Faster payment	£6,300.00
52	05/04/2023	Faster payment	£6,499.00
53	05/04/2023	Faster payment	£6,501.00
54	05/04/2023	Faster payment	£4,900.00
55	05/04/2023	Faster payment	£5,300.00
56	08/04/2023	Faster payment	£6,500.00
57	08/04/2023	Faster payment	£6,450.00
58	08/04/2023	Faster payment	£6,600.00
59	11/04/2023	Faster payment	£6,630.00
60	11/04/2023	Faster payment	£6,475.00
61	11/04/2023	Faster payment	£6,490.00
62	11/04/2023	Faster payment	£4,200.00
63	12/04/2023	Faster payment	£515.00
64	14/04/2023	Faster payment	£2,500.00
		Total	£197,762.55

Once Mr S realised he was not going to get back his money, he made a complaint to First Direct. It did not uphold his complaint. He then brought his complaint to this Service.

Our Investigator didn't uphold the complaint. They said that Mr S had misled First Direct when it contacted him about the payments he was making, and so the scam could not be uncovered.

Mr S then asked for an Ombudsman to look into things, so the complaint has been passed to me.

What I've provisionally 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'm currently minded to uphold this complaint in part. I'll explain why.

In broad terms, the starting position at law is that banks and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

Mr S authorised the payments in question – so even though he was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, First Direct should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider First Direct should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*
- Have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.*

In this case, I need to decide whether First Direct acted fairly and reasonably in its dealings with Mr S when he authorised payments from her account or whether it could and should have done more before processing them.

I wouldn't have expected First Direct to have intervened with the first two payments that Mr S made – they weren't of significant value or suspicious enough at this point for it to have had concerns that Mr S may have been the victim of a scam.

However, First Direct did contact Mr S when he made his third payment, and on two other occasions and has provided copies of the calls it had with Mr S throughout the payment journey which I have listened to.

The initial call was made when Mr S made his third payment of £2,637.48. During this call, Mr S was asked if it was him that was making the payment, and the purpose of the payment. Mr S confirmed that it was him that made the payment and that it was for crypto. At this point in the journey, I don't think that First Direct needed to ask more questions than it did – the payment wasn't particularly large, and while it was going to crypto, not all such payments are as a result of a scam, and I think that the level of intervention was proportionate to the level of risk identified.

The second call First Direct has provided was made when Mr S made a second payment of £4,400, again to crypto – and I agree that an intervention was needed here. But having considered the content of this call, I don't think that First Direct did enough, or asked enough questions to uncover what was really going on.

Firstly, at the beginning of the call, Mr S explained that he was in a busy airport at the time – and it is clear from the call that there is a lot going on in the background. I don't think that this was conducive to having the necessary detailed conversation I would have expected at this point. Overall, I found this conversation was unclear and I note Mr S confirmed he did not understand at several points during it, and it was generally unfocused.

By the time that Mr S made this payment, I think that First Direct should have had concerns that Mr S was likely to be at risk of financial harm – the payments he was making to crypto had been steadily increasing in value – which First Direct should have known is common with the type of scam Mr S was falling victim to.

On listening to the call, I don't think that First Direct brought to life the common features of a crypto investment scam – the call started off with describing an advance fee scam, which wasn't applicable to Mr S's situation, and I think confused Mr S about what the risks actually were.

I would have expected First Direct to start by asking Mr S what the payment was for – and why he had decided to make the payment, but the advisor didn't really do so. Instead, they pre-empted the answers they thought Mr S would give and asked him to confirm if this was the case in his situation, instead of asking open questions and waiting for Mr S to answer.

I also have concerns that the advisor wasn't listening to what Mr S was saying about what he was doing. At one point in the call, Mr S confirms that there is a third party (C) involved – and asks the advisor if he has heard of them – the advisor appears to have mis-heard what he said, and confirmed that they were aware of CB, a legitimate crypto exchange. In my mind, this should have been explored further, as it was clear to me that there was another company involved, which should have been a red flag to First Direct.

I also don't agree with our Investigator that Mr S wasn't truthful with First Direct about what he was doing. He was asked if he had been told to make the transfer, and answered no, but I don't think Mr S would have considered that he was being asked to make a payment. I think he felt he was simply making the payment as part of an investment he found. And while he was asked if he was trading on his own, and confirmed that he was, I think that as Mr S had been provided with a fake portal to conduct his own 'trades' he would have considered that he was conducting his own trades.

Had First Direct conducted the call more appropriately, I would have expected it to have asked the following, allowed Mr S to answer without prompting, and provided context around common crypto scams, which First Direct should have been well aware of at the time;

- *Why Mr S was making the payment*

- Why, if he has a crypto account for some time but not really used it, had he decided to do so now, and what prompted him to start investing
- Had he received any unsolicited messages or social media contact about the investment
- How did the investment work
- What was his understanding of how the investment would perform and expected returns
- Explained that crypto scams often begin with unsolicited contact
- The use of screen sharing software
- The use of fake investment portals, and how these are used by scammers to manipulate consumers into believing that their money is in their own trading account
- Allowing a consumer to make a small withdrawal early on in the scam to prove the scams legitimacy
- Being told to lie, or mislead the bank about the true nature of the payment

Had First Direct asked Mr S these questions, I think Mr S would have been honest with it, as I don't think he deliberately intended to mislead First Direct about what he was doing, and he wasn't coached about what to say. I also think that he would have been receptive to the information provided to him, as at one point during the call he asked First Direct if it thought it was a scam, but this wasn't explored at the time.

So, with this in mind I think that First Direct missed an opportunity to uncover the scam from this point. And while there was a further call that First Direct had with Mr S, this call was very similar to the first, and only confirmed if Mr S wanted to make the payment. There were no other attempts by First Direct to intervene in any of the other payments Mr S was making, despite the significant funds being paid out of his account.

The only thing left for me to consider is if Mr S should bear some responsibility for the loss that he has suffered, which I have thought about at length.

Having done so, I think that First Direct should refund Mr S 100% of payments five to nine, minus the £140 Mr S received back from the scammer. I say this because I think that First Direct could have uncovered the scam from this point, and was the expert here, not Mr S.

Mr S had dabbled in crypto before – but not to any great extent, and he looked up the supposed company online before making his payments, and I agree that at the time he made the payment, there was not much information available for him to have concluded that this could possibly have been a scam.

I also think that First Direct should refund Mr S the first two payments he made as part of the recovery scam he fell victim to (£343.66 and £2,053.83), as these payments could have been prevented by First Direct if it had done a better job in its earlier intervention.

However, after this point, it is clear that Mr S began to have doubts about making further payments as part of the recovery scam and was questioning the scammer about why he needed to pay more money in order to access his funds.

At this point, I think that Mr S should have had concerns that he was not dealing with a reputable company – the reasons provided for the need for further funds were not plausible, and while I understand that Mr S was desperate to get his money back, I don't think he was as careful as he should have been, and the amounts being requested were disproportionate to the money he had already lost.

So, as I think that both First Direct and Mr S are both responsible for what happened after

this point, I think liability for the remaining payments should be shared on a 50% basis. Finally, I don't think that there would ever have been a possibility for First Direct to have recovered any of the funds Mr S lost on his behalf – the payments were made to a genuine crypto exchange, which provided the service requested of it, and transferred on to the scammer – so there would be no way of getting the money back.

Putting things right

First Direct should refund Mr S 100% of payments 5-9 of the initial scam, plus fees charged. I calculate this to be £16,322.89 in transactions and £155.78 in transaction fees.

First Direct can deduct £140 from this amount, which Mr S received back from the scammer.

First Direct should also refund Mr S payments 1 and 2 from the recovery scam. I calculate this to be £2,397.48.

First Direct should also refund Mr S 50% of payments 3-64 of the recovery scam. I calculate this to be £97,682.54.

On top of this, First Direct should also pay Mr S 8% simple interest from the date of each transaction to the date of settlement (minus any lawfully deductible tax).

My provisional decision

I currently plan on upholding this complaint in part. If HSBC UK Bank Plc trading as First Direct agrees, it should put things right as set out above.

If either party has anything else for me to consider, I ask that this is provided to me by 14 November 2024, after which I will issue my final decision.

Claire Pugh
Ombudsman