

The complaint

Mr and Mrs W have complained HSBC UK Bank Plc trading as First Direct won't refund several payments they say they made and lost to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. In summary, Mr and Mrs W fell victim to an investment scam after being contacted via a messenger app. Mr W made numerous transfers to a cryptocurrency exchange, before forwarding the funds to the scammers. Mr W believed he was sending funds to a credible investment platform. After he paid a withdrawal processing fee, but still could not withdraw any funds, and was then informed he needed to pay another fee he subsequently discovered the investment was a scam.

The relevant transaction history from Mr and Mrs W's First Direct account statements are as follows:

Transaction	Date	Type of Transaction	Amount
1	10 November 2023	Transfer to cryptocurrency exchange	£2,500
2	10 November 2023	Transfer to cryptocurrency exchange	£2,500
3	11 November 2023	Transfer to cryptocurrency exchange	£2,500

First Direct didn't reimburse Mr and Mrs W's lost funds and so Mr W referred the complaint to us. Our Investigator looked into things but didn't recommend the complaint be upheld. They weren't persuaded, on balance, that First Direct could have prevented Mr and Mrs W from falling victim to the scam. As our Investigator couldn't resolve the matter informally, the case has been 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.

I'm 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 focussed 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'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.

I don't doubt Mr and Mrs W have been the victim of a scam here; they have lost a large sum

of money and have my sympathy for this. However, just because a scam has occurred, it does not mean Mr and Mrs W are automatically entitled to recompense by First Direct. It would only be fair for me to tell First Direct to reimburse Mr and Mrs W for their loss (or a proportion of it) if: I thought First Direct reasonably ought to have prevented all (or some of) the payments Mr and Mrs W made, or First Direct hindered the recovery of their payments – whilst ultimately being satisfied that such an outcome was fair and reasonable for me to reach.

I've thought carefully about whether First Direct treated Mr and Mrs W fairly and reasonably in its dealings with them, when Mr W made the payments and when they reported the scam, or whether it should have done more than it did. Having done so, I've decided to not uphold Mr and Mrs W's complaint. I know this will come as a disappointment to them and so I will explain below why I've reached the decision I have.

I have kept in mind that Mr W made the payments himself and the starting position is that First Direct should follow its customer's instructions. So, under the Payment Services Regulations 2017 (PSR 2017) Mr and Mrs W are both presumed liable for the loss in the first instance. I appreciate that Mr and Mrs W did not intend for the money to ultimately go to fraudsters, but Mr W did authorise these payments to take place. However, there are some situations when a bank should have had a closer look at the wider circumstances surrounding a transaction before allowing it to be made.

Considering the relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time - 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 payment service providers are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.
- Have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so.

So, I've thought about whether the transactions should have highlighted to First Direct that Mr and Mrs W might be at a heightened risk of financial harm due to fraud or a scam.

Having done so, I've noted First Direct did discuss Mr W's payments with him on 10 November 2023 when an advisor called him and again on 11 November 2023 when Mr W called it. Until Mr W had discussed these payments with First Direct they were not going to be released.

During the first call, as highlighted by our Investigator, First Direct questioned Mr W to try to

ascertain more about his payment. One of these questions was for confirmation as to the reason for the payment. The advisor clarified that she understood it was going to a crypto account but wanted to know the reason. In response Mr W said: *"It's going to my fiat wallet, which is a holding account, which is basically like a bank account, and I'll decide to buy what crypto I want to buy. It's my own fiat wallet."* The advisor then asked him if this is something he's experienced in, or if it was something new? Mr W confirmed: *"I trade on the crypto market anyway, for myself."* He also confirmed during this call that he had set the account up himself, he was not being guided by anyone, he has had crypto for years, it came across from his previous bank and it was nothing new for him. Additionally, First Direct specifically made Mr W aware that scammers have been persuading customers to move their money into cryptocurrency and make investments as part of the scam warning.

Having listened to the second call, that followed the similar pattern as above, I do not think First Direct could have ascertained at that point either that Mr W was falling victim to a scam.

Contrary to what Mr W told First Direct in these calls the final destination of his funds was not his cryptocurrency wallet. He also failed to share he was in constant contact with who he believed to be a broker and an individual he believed to be a fellow investor trying to better themselves. I've noted that Mr W has said that he completed his own research and he found the scammers showed a deep and professional knowledge about investments. I also appreciate there were some sophisticated aspects to this scam such as an investment platform where Mr W could see his trades real-time and that he had been supplied with some official-looking documentation. This all likely played a part in Mr and Mrs W's belief that they were investing with a legitimate investment firm. But, considering then that Mr W no doubt did believe this to be a legitimate investment, this would not explain why he was not sharing the details with First Direct. Ultimately, I believe it most likely he failed to share the full details because he was so convinced in the investment and what the scammers had told him.

However, as Mr W was not forthcoming with the additional details it did not allow First Direct an opportunity to uncover the scam. The answers he did give alleviated its concerns because there was nothing to suggest he was doing anything more than moving funds to his own wallet, that he treated like a bank account, before deciding what cryptocurrency he wished to invest in. As it appears he previously made payments, prior to the scam, to cryptocurrency this would have added to the persuasiveness of what he was saying. Albeit investing in cryptocurrency is a highly risky endeavour, it is ultimately a legitimate one and so Mr W's responses highlighted nothing that I consider should have caused First Direct additional concern.

Mr and Mrs W believe First Direct should have probed further, but I don't agree and consider its interventions to have been proportionate. First Direct's intervention must not amount to an interrogation and having listened to the available calls the questions it asked were appropriate. I am satisfied enough information was brought to Mr W's attention overall to put him on notice, considering his awareness of the wider details of his investment he hadn't shared, that there could be a risk of fraudulent activity. If Mr W had been more forthcoming with his answers First Direct would likely have recognised he was falling victim to a scam and stopped him from proceeding. As per Mr and Mrs W's testimony this was a sophisticated scam, with a personalised access to a fake trading platform and official-looking documentation supplied to them. This all no doubt added to their belief in the legitimacy of the investment, which in turn clearly did impact Mr W's receptiveness to being open about where he was sending his funds after the exchange.

Therefore, I'm not persuaded that any follow up questions First Direct could have asked in any call to Mr W would have uncovered the scam. It's most likely Mr W would have continued to provide First Direct with credible answers that would have reassured it of any

concerns it may have had.

Therefore, I'm not persuaded that First Direct could have prevented Mr and Mrs W's loss.

Recovery

I have gone on to consider if First Direct took reasonable steps to try and recover the funds. It's important to note Mr W didn't instruct First Direct to send the money directly to the scammers. All the funds were then sent on to a wallet address provided by the scammer. First Direct would only ever have been able to attempt to recover the funds from the original destination, Mr and Mrs W's own account. If these funds had not already been transferred to the scammer, they would be in Mr and Mrs W's control to access as and when they chose. Therefore, I am satisfied there wasn't anything further First Direct could have done.

The Contingent Reimbursement Model Code

Although First Direct has signed up to the Contingent Reimbursement Model Code, the payments Mr and Mrs W made from their First Direct account aren't covered by the Code because they made the payments from their First Direct account to their other account and not to another person. I cannot fairly and reasonably say that First Direct should have to refund payments under the Code when it doesn't apply here.

So, in light of all of the above findings, there's no fair and reasonable basis under which I can ask HSBC UK Bank Plc trading as First Direct to reimburse Mr and Mrs W's loss.

My final decision

My final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 7 July 2025.

Lawrence Keath
Ombudsman