

The complaint

Mr M complains about the actions taken by HSBC UK Bank Plc trading as 'first direct' when he wanted to make a payment to an investment company.

What happened

Mr M held a current account with first direct. On 17 September 2024, first direct blocked a £3,000 payment Mr M wanted to make out of the account to a financial business I'll call 'T'.

Over the course of the next few days, Mr M had a number of phone calls with first direct. Mr M was an experienced investor and he assured first direct that he'd carried out research and he was satisfied that he was dealing with a legitimate financial business. But first direct was concerned that although there was a genuine financial business trading as T, the Financial Conduct Authority (FCA) had reported that T had been cloned. This meant there was a real risk that customers might be misled into thinking they were dealing with T when in reality they were in contact with a scam business representing itself as T. And as Mr M had downloaded an app on his smartphone and his only dealings with T had been via the app, first direct said it couldn't be satisfied that Mr M was dealing with the genuine financial business operating as T.

first direct provided Mr M with a phone number that would put him in touch with the genuine business and asked him to ring and obtain confirmation that he held an account with T. Mr M agreed but was unable to speak to anyone as T offered only a recorded message service.

Following further phone calls with first direct, it carried out its own further enquiries. A Confirmation of Payee ('COP') check on the account details and the account name provided some limited reassurance and first direct said it was up to Mr M to decide what to do. first direct drew Mr M's attention to information available online about the risks of dealing with a cloned version of T. He agreed to look into this further. first direct made clear to Mr M that if it sent the payment to a cloned firm, it would not be able to get his funds back but said it could send the payment if he was still sure this was what he wanted.

Mr M chose to close his first direct account and he completed the transaction first direct had blocked by making the payment a different way.

When Mr M complained to first direct, it said it was sorry for any inconvenience and frustration caused. first direct said it had a duty of care to protect customers and their money and all its decisions had been taken with the best of intentions.

Mr M brought his complaint to us. Our investigator didn't think that first direct had done anything wrong. He thought that it was reasonable for first direct to request the information it had asked Mr M to provide.

Mr M disagreed with the investigator's view. He mainly said that whilst first direct had offered to go ahead with the transfer, he'd had a further call to say that the restrictions put on his account couldn't be lifted which left him unable to send any money from the account. This was the position until he switched to another bank.

Mr M asked for an ombudsman to review his complaint, so it has been passed to me to decide.

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.

This includes listening to the call recordings provided.

Having done so, I've decided not to uphold Mr M's complaint. I'll explain why.

I appreciate that Mr M feels strongly that he'd done enough to be satisfied that he was dealing with a long established and well-regarded financial business. And he believed that the way he was sending payment to T, via a secure third-party platform also used by first direct, was a guarantee that his money wasn't going to a scam business.

But first direct can't simply rely on Mr M approving the proposed payment. I must take into account that first direct has legal and regulatory obligations imposed by the FCA. This means that first direct has to have processes in place to help ensure it takes reasonable steps to keep customers' money safe.

first direct's terms and conditions, which Mr M would've signed up to in order to be able to use the account, say it may not be able to make a payment if it can't confirm the identity of the payee and the customer hasn't provided extra information about the account that it has reasonably asked for. So I am satisfied that first direct didn't make any error when its systems flagged Mr M's payment for a security check.

I'd still expect first direct to act in a fair and reasonable way – and I am satisfied that it did so here. Mr M had downloaded an app on his smartphone and his only dealings with T were via the app. He'd used the live chat function on the app, but he hadn't spoken in person to anyone at T or tried to withdraw money via the app.

Mr M first tried to make a payment of £3,000. After initially speaking to first direct when the payment was held for fraud checks, it was agreed that first direct would reverse it and credit the money back to Mr M's account. I think it's fair to say from listening to that call that Mr M seemed happy with this at the time. The money was expected to be back in his account within the next two hours and Mr M told first direct he'd make the payment via the app next time.

So I think it was reasonable, after Mr M attempted to send a payment of £2,500 to T from his first direct account the next day, first direct also blocked this payment and wanted to know '...what's made you want to send £2,500 now?'

first direct had good reason to be wary about transactions purportedly to T when the FCA had already highlighted the risks of dealing with a cloned business. And Mr M hadn't been able to provide any good enough evidence to reasonably rebut concern that he might not be dealing with the genuine financial business with whom he intended to place his money. So I think it was reasonable for first direct to ask him to make contact with T directly and ask it to provide a statement showing his account details or some other confirmation of his account with the genuine T. The information first direct asked for was intended to help the bank to keep Mr M (and other customers') money safe. A payment to a fraudster or scam business cannot necessarily be recovered. I think first direct acted fairly and reasonably when it asked Mr M to provide the information it requested.

When Mr M was unable to speak to anyone on the number first direct provided for T and he was only able to provide a generic screenshot when he used the app, first direct tried to verify T's credentials by doing a COP check. This prompted first direct to tell Mr M that, subject to him reviewing information about the scam risk here (which first direct drew to Mr M's attention), it would agree to allow payment to proceed with his informed authorisation. Mr M seemed happy with this. During the call on 19 September, he said he'd do a bit more checking before he sent the money and the call ended on the understanding that he'd call back on a direct dial phone number he was given for this purpose.

There's some disagreement between the parties about what happened next. Mr M said first direct reneged on what it had said and declined to make the payment when he phoned to ask it to proceed, leaving him unable to use the account. But first direct has sent us information that shows no record of Mr M calling back on 20 September, as he'd said he would. first direct has said it would have allowed the payment to proceed if Mr M had called back with those instructions.

I'm mindful that Mr M has accepted he had overlooked some things he was told in another call. That's unsurprising - there were four calls in relatively quick succession and I can understand why someone might get muddled about what exactly was said when during the course of those exchanges. My role is to consider the evidence presented by Mr M and first direct and reach an independent, fair and reasonable decision. My findings are made on a balance of probabilities, in other words, what is more likely than not, based on the evidence provided by the parties. On balance, what Mr M says isn't enough for me to be able to uphold his complaint that he wasn't treated in a fair and reasonable way overall.

To sum up:

- Banks have an obligation to take steps to keep customers' accounts safe and prevent fraudulent transactions. Sometimes this can mean the bank identifies and blocks legitimate payments that a customer wants to make. Understandably, this can cause distress and inconvenience to a customer – but it doesn't necessarily mean the bank has acted incorrectly or unfairly. Checks undertaken as part of first direct's verification process are designed in the interests of its customers to help keep their money safe and prevent fraudulent activity on their accounts.
- It's up to first direct to decide how it meets its regulatory obligations, so I can't say that it acted unfairly or unreasonably when it asked Mr M for information it says it needs to meet these obligations.
- I consider that first direct was clear about the information it needed, and why, and I think its information requests were reasonable.

I recognise that Mr M found all this frustrating. But in order to uphold this complaint I would need to be able to fairly say that first direct did something wrong or acted in a way that wasn't fair and reasonable – and I haven't seen enough here to do so. It makes no difference to the outcome that Mr M has subsequently invested successfully with T. It follows that I can't award the compensation Mr M would like me to. And I won't be asking first direct to do anything more.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 16 January 2025.

Susan Webb
Ombudsman