

The complaint

Mr H complains that HSBC UK bank Plc (trading as first direct bank) has not refunded money he lost to what he believes was a scam.

What happened

Mr H bid in an online auction to purchase two properties. I'll call the auction company "the merchant". Mr H's bids were successful, and so the merchant took two card payments from Mr H's first direct account, of £13,000 each, as deposits for the properties. Mr H says that he had not expected the deposits to be so high, but he nonetheless intended to go ahead with the property purchases. He had around a month to complete the purchases, otherwise he would forfeit his deposits.

Shortly before this completion period was due to expire, the merchant told Mr H of additional fees that he would need to pay as part of the completion agreement. Mr H's solicitors were not happy with the limited information provided about these fees, and were also unhappy about the information they'd received about the legal owner of the properties, so said they would no longer represent him in the sale. Ultimately, the sales did not complete on time – Mr H was unable to purchase the properties and lost his deposits.

Mr H believes the merchant was not acting legitimately, and that he had therefore been scammed out of his money by the merchant. He raised his concerns with first direct, but it said it could not help him recover his lost money. Mr H went on to begin court action against first direct, Mastercard (as the relevant card scheme), and the merchant. Mr H says the court action against first direct did not go anywhere, that he did win a judgment against Mastercard but that this was subsequently set aside, and that he reached an out of court settlement with the merchant which resulted in him being paid around £4,000.

Mr H then asked first direct to look into his concerns again, but it still maintained that it could not assist him. Unhappy with first direct's response, Mr H brought his complaint to us.

The investigator found that this was most likely was not a case where Mr H had been scammed, instead they felt this was most likely a civil dispute between Mr H and the merchant. With this in mind, they did not consider that first direct could or should have done anything to prevent the payments from going ahead, and felt that first direct had acted reasonably in declining to raise chargebacks for these payments. So, they didn't recommend that first direct refund any of Mr H's loss.

Mr H maintains that the merchant was acting fraudulently, and that he should therefore be entitled to a refund of his loss. So, as no agreement could be reached, this case 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.

Having done so, I'm not upholding it, and I'll explain why below.

I'd like to be clear from the outset that my role is only to consider whether first direct has treated Mr H fairly here. I can only look at what first direct should do in these situations, and whether it correctly followed its processes, it is not my role to forensically analyse the merchant's actions.

I am satisfied that Mr H authorised the payments that are the subject of this complaint. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means he is responsible for them.

Because of this, Mr H is not automatically entitled to a refund. Nonetheless, the regulatory landscape, along with good industry practice, sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

However, the expectation on a firm to intervene and warn customers of the risk of financial harm from fraud and scams will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that first direct could have prevented the payment if concerns about the payee were discussed with Mr H.

I appreciate Mr H strongly considers the merchant to have been operating fraudulently. But I'm not persuaded there's enough evidence to demonstrate this, or to show that there was never an intention for the merchant to sell him the properties he had bid on. As well as the comments from his solicitors about the additional fees and the ownership of the properties, Mr H has also pointed to comments from a well-known property sales website about how the merchant operated, and numerous reviews from others who have had a negative experience with the merchant to support his position.

However, while the ways and means of a particular business could be viewed as unreasonable or even unethical, that doesn't necessarily mean they amount to the high legal threshold or burden of proof for fraud. The merchant continues to operate to this day, and it appears that while some people may be unhappy with its tactics, there are undoubtedly also a large number of people who have apparently used the merchant's services without issue. In addition, I note that the merchant is also a full member of The Property Ombudsman. It would be rare to see a fraudulent company submit itself to oversight and regulation by an independent body. And while I acknowledge that there may have been some concerns about the ownership of the properties at the time of the proposed sale, this service is not in a position to investigate the merchant's actions regarding that issue in any depth.

With all of this in mind, overall, I can't agree that the evidence clearly suggests that Mr H has been intentionally scammed here.

As a result, there would've been no expectation on first direct to intervene in these circumstances as it isn't required to protect its consumers from the risk of financial loss due to bad business practices. So, I don't think I can reasonably say first direct acted unfairly by failing to intervene.

However, even where a scam or fraud has not occurred, there may still be circumstances where a bank such as first direct can recover card payments its customer has made. So, I've gone on to consider whether first direct met its obligations regarding this aspect of Mr H's case.

A chargeback is a voluntary process run by a card scheme, in this instance, MasterCard. It is intended to resolve settlement disputes without the need to resort to more formal resolution. Examples where a chargeback may be appropriate are where goods never arrived or the merchant never provided them, or where goods are faulty and not as described. But a chargeback doesn't guarantee a refund, and a bank isn't required to raise chargebacks if it's clear that a chargeback would have failed. We would though consider it good practice for a chargeback to be attempted where the right exists and where there is a reasonable chance of recovery.

Chargebacks aren't decided on the merits of the dispute between the cardholder and merchant, but rather it's decided on the relevant card scheme's rules. Ultimately, it's MasterCard's guidelines and first direct have no power to change them. So, I've thought about whether first direct fairly applied MasterCard's guidelines when declining the chargeback requests.

But given the agreement that Mr H had with the merchant – that the deposits would be taken as soon as his bids were successful and that they were then non-refundable – I cannot see how there would have been any reasonable grounds on which to successfully challenge the payments via the chargeback scheme. I understand that Mr H has questioned the validity of the agreement he signed with the merchant, as he feels changes were then made which negated what he had agreed, but I can't see that this is something that would be reasonably dealt with via the chargeback scheme – which is after all intended to be an informal route for resolving disputes between merchants and cardholders – it is an issue that is much better suited to the courts, or another more formal process.

While I have sympathy towards Mr H's circumstances, I think first direct's decision not to raise chargeback requests was reasonable as the information it had at the time suggested they were unlikely to have been successful. I appreciate that Mr H subsequently did receive a partial settlement of his loss from the merchant, following the involvement of the courts, and to me that supports the position that this issue was better dealt with via that route, rather than via the chargeback process.

I appreciate this will come as a disappointment to Mr H, but overall I'm not persuaded first direct has acted unfairly in these circumstances, so I won't be asking it to take any further action.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 June 2025.

Sophie Mitchell
Ombudsman