

## **The complaint**

Mr P has complained that HSBC UK Bank Plc (trading as “first direct”) failed to protect him from falling victim to an investment scam and hasn’t refunded the money he lost.

## **What happened**

The background of this complaint is already known to both parties, so I won’t repeat all of it here. But I’ll summarise the key points and then focus on explaining the reason for my decision.

Mr P has explained that around June 2024 he found an investment opportunity through a social media platform in which he could make 15% returns on his investment. He opened an account with the investment company he says its website led him to believe it was regulated by the Financial Conduct Authority.

Mr P agreed to invest and after communicating with the alleged CEO of the company (“the scammer”) through a messaging app he made three payments totalling £9,000 to an account in what he believed to be the name of the director of the investment company. He says he did this because the company initially asked to be paid in cryptocurrency but as Mr P didn’t have a cryptocurrency account, he was provided with bank details instead.

Mr P has explained that he exercised caution by making two small initial payments – for £100 and £900 – before making a larger payment of £8,000. As Mr P says he received emails confirming the payments had credited his alleged investment account, and it also appeared he was making a profit on it, he trusted it was being sent to a legitimate recipient. He’s also explained that the company claims to be regulated by the Financial Conduct Authority, which further reassured him it was genuine.

Mr P has explained that he was told the £8,000 payment didn’t arrive in the recipient’s account so he contacted the receiving bank to ask it to return the funds. That bank told Mr P it’d hold on to the funds until it received a request from first direct.

Mr P also made a complaint to first direct but first direct didn’t uphold the complaint. In its response it said it had given Mr P sufficient warnings about scams before the payments were made, and that Mr P had been negligent in allowing the scam to happen, so it didn’t refund what he’d had lost. But it was able to recover £3,150.52 of Mr P’s losses, which it returned to him.

Mr P remained unhappy so he referred the complaint to this service. He disputes the fact that he was been grossly negligent, and he’s explained he feels as though first direct didn’t do anything to help him with the situation. He also said if first direct had acted more quickly when he reported the scam it would’ve been able to recover more than the £3,150.52 that it did.

Our investigator considered everything and didn’t think the complaint should be upheld. He explained he thought the warnings first direct gave Mr P for the first two payments were proportionate. And he explained that he didn’t think a warning would’ve made a difference

and prevented Mr P from making the third payment – as he'd established a level of trust with it. He also explained he didn't think first direct would've found the payments particularly unusual or suspicious, because Mr P's account activity prior to the scam shows other high value and investment-related payments. He also said first direct had attempted to recover the funds from the receiving bank as soon as it was made aware of the scam.

As Mr P didn't accept the investigator's opinion, the case has been passed to me to make 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.

I'm sorry to disappoint Mr P but having considered everything I'm afraid I'm not upholding his complaint, broadly for the same reasons as our investigator, which I've set out below.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And in this case it's not in question whether Mr P authorised these payments from leaving his account. It's accepted by all parties that Mr P gave the instructions to first direct and first direct made the payments in line with those instructions, and in line with the terms and conditions of Mr P's account.

But that doesn't always mean that the business should follow every instruction without asking further questions or intervening to ensure requests coming from their customers are firstly genuine, and secondly won't result in harm.

#### *How did first direct intervene before the payments were made?*

In order to fund his alleged investment Mr P created a new payee and made three payments to it. For the first two payments first direct has provided evidence that it asked Mr P for the reason for the payments, and presented him with a list of options. Mr P selected that he was "making an investment" and he was then shown a warning screen which included several investment related scenarios, including *"Don't make the payment if you've been cold called, offered guaranteed returns, or if you're pressured"*.

The bottom of the warning screen encouraged Mr P to speak to an independent adviser if he was unsure in any way and showed a disclaimer alerting him to the fact that first direct might not be able to recover any funds if they were sent to a fraudster.

Mr P was then asked to choose whether to *"Continue"* or *"Don't send the money"*. As he chose to continue on both occasions, the payments were sent.

By the time Mr P sent the third payment first direct says the payee had become trusted. So it allowed the payment to be sent without asking for the reason or showing any warnings, or introducing any other friction to the payment's journey.

#### *Did first direct do enough to protect Mr P from the scam?*

Having carefully considered the circumstances of Mr P's case, I find that first direct's interventions were proportionate to the risks presented by the payments, even though they were ultimately unsuccessful in preventing the scam. But I'm not persuaded that was first direct's fault.

Before proceeding with the payments, first direct also presented Mr P with scam warnings. He accepted these warnings on two separate occasions. Whilst warnings are an important tool in fraud prevention, their effectiveness relies on the customer recognising and acting on the risk. In this case, Mr P proceeded despite the alerts. And given the size of the payments – which were relatively small – I think it was proportionate for first direct to show automated written warnings, which broadly covered the risks associated with the scam it thought Mr P was most likely to fall victim to.

Mr P had already made two payments to the same payee before making the larger £8,000 transfer. He's explained he'd seen these funds successfully arrive in what he believed to be his investment account. This would've reinforced his belief that the payee was legitimate, making it less likely that further interventions would have changed his mind.

The pattern of payments wasn't typical of many scams, where fraudsters often request rapid, repeated transfers within a short period. Instead, Mr P made the payments on three different days, which wouldn't necessarily trigger the same level of suspicion as a series of quick, escalating transfers.

Having reviewed Mr P's account history I can see that in the six months prior to the scam he'd made several large payments – for example he made payments of £33,000 and £42,000 to financial businesses in December 2023, another of £85,000 in February 2024, and three payments totalling £26,000 to what appears to be an account held in his own name at another bank in March 2024. His account also shows other transactions that appear to be investment related. So although the payments made during the scam were made to an account held by an individual, I'm satisfied that even if first direct had spoken to Mr P about the reasons for them and he'd told it they were part of an investment, this wouldn't have flagged as unusual or suspicious, given what first direct knew about Mr P's typical account usage.

With all of this in mind, the £8,000 transfer wasn't of character for Mr P. And given that this was the third payment he'd made to the same recipient, it was reasonable for first direct to consider that he'd established a level of trust with the payee.

Having considered everything, even if first direct had intervened before the third payment, it's unlikely this would've uncovered the scam. Mr P would've explained that he was making an investment and that he'd already seen funds from the first two payments successfully credited to his supposed investment account. And if first direct had questioned him about expected returns, he would've explained that he was told he could achieve a 15% return. Whilst this is a healthy return, it's not necessarily "too good to be true" and in my view wouldn't immediately raise red flags in the same way that extreme promises of wealth often do.

Given these factors, I'm satisfied that first direct took proportionate steps to protect Mr P, and even if it had done more, it's very unlikely it would've uncovered the scam. Whilst I'm certainly not placing the blame on Mr P for what happened, in this case the fact that the scam wasn't prevented also doesn't mean first direct acted unreasonably or should be held responsible for the loss.

I do understand Mr P's frustration at first direct's suggestion that he was grossly negligent – especially as he thought he'd taken appropriate steps to safeguard himself from fraud. But it's very unusual to send funds for an investment to an individual working at the company – as Mr P did in this case – as opposed to sending the payments to the investment company directly. And whilst I understand Mr P says he believed the company was regulated by the FCA as he took the information in its website at face value, the FCA's register doesn't show a registration for the company, nor is it a registered company in the United Kingdom.

This, plus the fact that Mr P was shown two sufficiently prominent and impactful warnings, leads me to conclude that first direct isn't responsible for the losses that Mr P unfortunately made.

### Recovery of the funds

Mr P reported the scam to first direct on 10 June 2024 and I can see that first direct contacted the beneficiary bank to attempt recovery of the funds on the same day.

The beneficiary bank responded to first direct letting it know that it had managed to recover £3,150.52 but the remainder had been withdrawn.

Having considered this I'm persuaded first direct did what it needed to do in an attempt to recover Mr P's money. Funds obtained fraudulently are often withdrawn within hours of receipt, if not sooner, and it appears that's what happened here. First direct contacted the beneficiary bank as soon as it was aware of the scam, and although it took some time for it to respond to first direct with an outcome on the recovery attempt, that's not what led to the remainder of the funds having been withdrawn. The scam was reported three days after the third payment was made, so it's unsurprising they'd been withdrawn before then.

I note that I've seen Mr P contacted first direct on 7 June 2024, the same date as he sent the final payment. I know Mr P feels strongly that he reported the scam on that date but I've listened to those calls and they do not make mention of a scam.

They refer to the receiving bank saying it hadn't received the funds Mr P had sent as the account had been closed. Mr P was told the payment may bounce back or could be traced, but this would need to be done on the next working day. So I haven't concluded that first direct failed to contact the receiving bank when it should've, as there was no suggestion that it would do so, nor that a scam had taken place when Mr P contacted it after payment three had been made on 7 June 2024.

I'm very sorry that Mr P has fallen victim to this scam and I do understand that my decision will be disappointing. But for the reasons I've set out above, I don't hold first direct responsible for that.

### **My final decision**

I don't uphold Mr P's complaint against HSBC UK Bank Plc trading as first direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 May 2025.

Sam Wade  
**Ombudsman**