

The complaint

Mr O complains that HSBC UK Bank Plc, trading as first direct, won't refund money he lost when he was a victim of a crypto investment scam.

Mr O is represented by a firm I'll refer to as 'W'.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In 2024 Mr O fell victim to a crypto investment scam – with a crypto investment company that I'll refer to as 'D'. As part of the scam, Mr O purchased crypto from legitimate crypto providers before forwarding it on to D's trading platform. Mr O made several payments from his first direct account to the legitimate crypto provider, and about 15 payments to his other banking providers (which I'll refer to as 'M' and 'R') from where he purchased the crypto. The payments from Mr O's first direct account totalled about £60,000 and took place between 16 July and 28 August 2024.

Mr O realised he was scammed when, despite paying fees to withdraw his funds, none were received. W complained, on Mr O's behalf, to first direct on 4 November 2024. First direct didn't uphold the complaint. They said the payments went to accounts/wallets in Mr O's own name that he had control over. And so, he would need to contact the bank where he sent the funds – as the fraudulent payments weren't sent from first direct. First direct added that they spoke to Mr O about a payment he made to his R account on 30 July 2024 and gave him scam warnings, but he still wanted to proceed with the payment.

The complaint was referred to the Financial Ombudsman, but our Investigator didn't uphold it. In short, he said:

- Although first direct did carry out additional checks before processing a £5,000 payment to R, this was mainly focussed on whether it had been authorised by Mr O – with only a brief 'safe account' warning provided.
- First direct ought to have carried out additional checks before processing a £20,000 payment Mr O made to his M account – as it was a high value payment going to a new beneficiary (albeit in his own name), that was out of character compared to his typical account usage.
- Even if first direct had intervened before processing the £20,000 payment, he wasn't persuaded this would've made a difference. This is because M carried out additional checks before processing the subsequent transaction to the legitimate provider for these funds. And this consisted of Mr O being asked probing questions surrounding crypto investments along with comprehensive crypto investment scam warnings being provided. Despite this, Mr O chose to proceed with the payment. So, he considered Mr O would've similarly proceeded if first direct had intervened and provided crypto investment scam warnings.

- There wasn't any realistic chance of recovery.

W disagreed. In short, they've said:

- If first direct had asked sufficient probing and open-ended questions, it would've uncovered the scam. In turn, a more impactful warning tailored to Mr O's situation and how he could protect himself from the risk of fraud should've been provided. It would've resonated with Mr O that first direct was questioning the payments, prompting him to pause and look more closely into the investment before proceeding – as well as making further enquiries into investment scams.
- First direct could've done their own due diligence and asked for the name of the scam firm, thereby allowing them to check the FCA register before deciding whether to allow Mr O to proceed with the payment.
- The lack of intervention by first direct was shocking. If they had a better system of intervention in place they would've been able to pick up on Mr O's unusual transaction. First direct should've made more detailed enquiries of Mr O about the purpose of the payments before allowing them to be made.
- First direct missed an opportunity to intervene and prevent Mr O's funds being lost to the scam.

The matter 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.

I'm sorry Mr O has been the victim of a scam. I don't underestimate the impact it has had on him. I therefore understand why he'd do everything he can to try and recover the loss he's suffered. But I need to decide whether first direct can fairly and reasonably be held responsible for Mr O's loss. And I don't think they can, I'll explain why.

Before I do, I want to reassure Mr O that I've considered everything that W, on his behalf, has submitted in support of his complaint. And so, while I've summarised this complaint in far less detail than what has been provided, I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I have ignored the point. It's simply because my findings focus on what I consider to be the central issue in this complaint – that being whether first direct is responsible for the loss Mr O has suffered.

In broad terms, the starting position in law is that a bank is expected to process payments that their customer authorises them to make. It isn't disputed that Mr O knowingly made the payments from his account and so, I'm satisfied he authorised them. Therefore, under the Payment Services Regulations 2017 and the terms of his account, first direct are expected to process Mr O's payments, and he is presumed liable for the loss in the first instance.

However, taking into account the regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for first direct to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.

The question then arises whether first direct ought reasonably to have held such suspicions or concerns in relation to Mr O's payments - and if so, what might've been expected from a

proportionate intervention at that time. Further to that, where there is an interaction between a customer and a bank before a high value payment is processed, as there was here, I'd expect the bank to take reasonable steps to understand the circumstances of that payment.

So, taking all of this into account, I need to decide if first direct acted fairly and reasonably in their dealings with Mr O when he made the payments. Specifically, whether they should've done more than they did before processing them – and if they had, would that have made a difference. I also need to decide if first direct could've reasonably recovered the lost funds.

But for me to find it fair and reasonable that first direct should refund Mr O requires more than a finding that first direct ought to have intervened. I would need to find not only that first direct failed to intervene where they ought reasonably to have done so or in the way they ought to have done - but crucially I'd need to find that but for this failure the subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by first direct wouldn't have revealed the payments were part of a fraud or scam, then I couldn't fairly hold them liable for not having prevented them from being made.

Here, first direct did carry out additional checks before processing a £5,000 payment to R. But as our Investigator explained, I don't think these checks went far enough. This is because they focussed on whether Mr O authorised the payment and provided warnings tailored towards safe account scams. And so, first direct didn't enquire about the surrounding circumstances of the payments and the potential risks associated with it – included the possibility of multistage fraud.

Nevertheless, I also agree with our Investigator that first direct ought to have carried out additional checks before processing an earlier £20,000 payment Mr O made to his M account on 28 July 2024. Although the payment was going to an account in Mr O's own name and control, first direct should be aware of the risks of multi-stage fraud. And here, the payment was more than Mr O typically spent on first direct account. So, it would've been reasonable for first direct to have contacted Mr O to have enquired about the payment to better understand the surrounding circumstances of why he was making it. I've therefore considered what would've likely happened if first direct had done this.

When considering this, I've taken into account additional checks M completed when Mr O tried to send the £20,000 to a legitimate crypto provider as part of the scam. I won't set out all the details of M's additional checks here – as I've set that out in my final decision for Mr O's complaint against M. But I'm satisfied that M undertook a comprehensive fraud conversation with Mr O regarding this payment, highlighting the risks of crypto investment scams and their common features, along with asking probing questions to understand the surrounding circumstances of why he was making it. M also provided Mr O with written scam warnings tailored to crypto investment scams that were relevant to his situation.

Despite this, Mr O unfortunately failed to disclose to M that a third-party was involved. Nor did he mention the WhatsApp group that he'd joined which led to him to decide to invest. But instead, Mr O reassured M that he knew what he was doing, had a significant amount of experience in crypto investments and had tested the account he was paying (so knew the details were correct). Mr O was also insistent he was investing legitimately with a firm that was FCA regulated and, seemingly, found M's checks an unnecessary barrier.

Further to this, I found Mr O spoke calmly and clearly. And he explained to M that he was aware of their responsibility to carry out fraud checks having been an ex-bank manager himself. But he said he didn't need his hand being held as he isn't a gullible pensioner or a

little old lady being scammed. And he thought the need to verify what he was telling M (by providing evidence of his crypto wallet) was suggesting he was a 'liar', and that he found the call 'quite offensive' as it was making him feel 'incompetent'.

While I'm sympathetic to Mr O's situation, I think M took reasonable and proportionate steps to protect him from the risk of fraud or a scam. But sadly, Mr O failed to respond positively to the warnings he was provided. And the failure to disclose the involvement of a third party prevented M from knowing the true circumstances of the £20,000 payment – thereby limiting their ability to uncover the scam. Because of this, if first direct had carried out similar checks before processing the £20,000 payment to M, I've no reason to think it would've gone any differently. As such, I don't think first direct could reasonably have uncovered the scam by way of a proportionate intervention. Nor do I think it would've deterred Mr O from making the payments. Instead, I think first direct would've likewise concluded that Mr O was investing for legitimate purposes when making the £20,000 payment. And even if first direct had carried out checks on subsequent payments made as part of the scam, which arguably ought to have happened given their value and frequency, I see no reason to think that Mr O would've responded any differently to further questioning.

W has also argued that first direct could've done their own due diligence before allowing Mr O to proceed. But even if it had come to light that Mr O was investing through D, I'm not persuaded that first direct would've been able to ascertain D was a scam firm simply because it wasn't regulated by the FCA – as, due to the unregulated nature of crypto, this is relatively common and not necessarily indicative of only scam firms. And even if the regulatory nature of D was brought to Mr O's attention, I'm not persuaded this would've deterred him from making the payments. This is because Mr O had communicated very clearly with M that he understood the risks of crypto and knew what he was doing (having invested significant sums for several years). I therefore don't think first direct can fairly be held responsible for Mr O's loss.

In terms of trying to recover the lost funds, unfortunately, there wasn't any reasonable prospect of this. This is because Mr O had already forwarded the funds he sent to M, R and the crypto provider on to the scam. So, there wouldn't have been any funds remaining. And even if there had been, they would've been accessible to Mr O.

I have a great deal of sympathy for Mr O and the loss he's suffered. But it would only be fair for me to direct first direct to refund his loss if I thought they were responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell first direct to do anything further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 13 November 2025.

Daniel O'Dell
Ombudsman