

The complaint

Mr B complains that HSBC Bank Plc (trading as First Direct) blocked the funds in his account, preventing him from completing the purchase of a property.

Mr B has appointed two attorneys – his daughters - to manage his affairs and they have brought this complaint on Mr B's behalf. I'll refer to them as the attorneys.

What happened

Mr B moved to a care home in July 2022 at which point the attorneys took over the management of his financial affairs including paying the monthly care costs of around £6,200. They informed First Direct on 10 January 2023 that Mr B was no longer able to manage his own affairs as he didn't have mental capacity to do so.

In March 2023 the attorneys purchased an investment property (property A) using funds in Mr B's First Direct account. They also used funds in the account to carry out refurbishments to the property in order to improve its condition enough to rent it out. The intended purpose of the rental income was to help cover the cost of Mr B's care.

On 30 June 2023 Mr B's previous residential property (property B) was sold. The property was in a state of disrepair and it wasn't financially viable to try and carry out repairs that would allow it to be rented out so it would produce an income for Mr B.

The proceeds of this sale were around £500,000. Part of the proceeds were used to pay the deposit on another rental property (property C) and the remaining proceeds were moved to Mr B's First Direct account awaiting completion of the purchase of property C.

On 6 July 2023 the sale of property C was due to complete and the attorneys requested that funds of around £320,000 were transferred to the solicitors dealing with the purchase. First Direct refused as the contract of sale showed the attorneys as the buyers rather than Mr B as it would've expected to see.

To try and resolve the issue, the attorneys changed the buyer to Mr B on the relevant paperwork the following day. It provided evidence of this to First Direct but it didn't release the funds as it remained concerned the attorneys weren't acting for Mr B's benefit.

As part of its investigation, First Direct contacted the Office of the Public Guardian ("OPG") for advice, which in turn started its own investigation to determine whether the attorneys were acting in Mr B's interests. While this investigation was ongoing First Direct kept account restrictions in place and the attorneys were unable to access funds in the account. As a result, the attorneys couldn't complete the purchase of property C and Mr B was held liable for the costs associated with this which included significant legal costs and the loss of the deposit paid.

On 8 December 2023 the OPG concluded its investigation clearing the attorneys of any misappropriation of funds and found they were acting in Mr B's best interests. Following this First Direct removed restrictions from the account.

The attorneys complained to First Direct about the financial loss Mr B had suffered but it was satisfied it had acted in line with its duty of care to Mr B by limiting the attorneys' access to the money in the account while their use of the funds was investigated. The attorneys didn't accept First Direct was acting in Mr B's interests and raised a complaint to our service on his behalf.

I issued my provisional decision in January 2025. In summary I said that:

- First Direct has a regulatory responsibility to protect its vulnerable customers where it identifies a risk. In line with the relevant law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, it may decide to intervene or request further information in order to satisfy itself that its customer is protected.
- It isn't in dispute that initially, the attorneys tried to purchase property C in their own name. And overall I concluded the fact they did this was enough to prompt an intervention from First Direct. I said it was reasonable that First Direct had concerns, based on this attempt, that the attorneys weren't acting in Mr B's interest and this warranted further investigation by the OPG.
- I thought it was reasonable that in response to this First Direct restricted Mr B's account while the matter was considered further. And whilst I could see the attorneys quickly switched the buyer of property C to Mr B when First Direct raised concerns, I thought it was reasonable First Direct didn't think this was enough and decided to wait for the outcome of the OPG's investigation before removing the restrictions from Mr B's account.
- The consequences of keeping the restrictions in place during the OPG's investigation did result in the purchase of property C failing. But overall First Direct was balancing this risk with the risk of all of Mr B's funds being misappropriated. Ultimately it waited for the appropriate body to investigate and I didn't think this was unreasonable in the circumstances.
- I could see that First Direct misunderstood some of the circumstances – it mistakenly believed the attorneys owned property A and had used Mr B's money to renovate a kitchen in this property. I agreed First Direct could've looked into this matter more carefully to ensure it had accurate information. But even with more accurate details, it wasn't in dispute that the attorneys did try and purchase property C in their own name. This alone was enough to reasonably have prompted the action First Direct took.

First Direct had no further comment in response to the provisional decision. Mr B's attorneys responded with some additional information they asked me to consider. I've addressed these additional points in more detail below but in summary they said that:

- After they had changed the buyer of property C to Mr B, they were not trying to buy a property in their own name anymore so First Direct should've treated this as a purchase the attorneys were making in Mr B's name a disregarded the previous attempt.

- In any event, purchasing a property in their own name was a legitimate purchase for future tax planning purposes and was in line with what they knew to be their father's wishes.
- First Direct had conversations with both the solicitor arranging the purchase of property C and the solicitor that arranged the POA which, along with other evidence, should've been enough to reassure it they were acting in Mr B's interest
- They felt that First Direct should've treated the OPG's investigation as a separate matter and allowed the purchase to go ahead given the financial consequences. They said First Direct's role was not to decide whether or not individual payments should be made on behalf of Mr B.

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 have considered the attorneys detailed response very carefully and I want to assure them I have taken all of their points on board. But overall, my conclusions remain broadly the same as outlined in my provisional decision so I won't repeat everything here. But I've provided more detail in response to some of the specific points they've raised.

A large part of the attorney's response is their concern that my decision is based on an incorrect assumption. They've explained very clearly that from 7 July 2023 they were not trying to purchase property C in their own names. They had changed all the paperwork they were able to at that point, to show that Mr B was the buyer.

I want to thank them for taking the time to set out this information so clearly. And I want to assure them that I've understood that at the point the purchase of property C failed, Mr B would've been the buyer.

But the issue here is that when they were initially buying property C, they were buying the property for themselves. The fact that they tried to do this gave First Direct cause to be concerned that they were using Mr B's money for purposes that didn't benefit him and that there was a risk they were abusing their position as attorneys. First Direct felt this attempt was sufficient cause to refer the matter to the OPG and place restrictions on the account until the OPG had completed its investigation.

I completely understand and accept that the attorneys then changed the buyer to Mr B and would've gone ahead with the purchase in Mr B's name. But at the time this happened, I have to consider whether I think the changing of the buyer to Mr B ought reasonably to have been enough to persuade First Direct there was no longer any risk in this case. First Direct didn't think so. It decided to ask the OPG whether or not its own investigation was warranted. I think this was reasonable.

The attorneys have said First Direct didn't have the authority to make decisions about whether the purchase could go ahead so it shouldn't have prevented it. But First Direct hadn't made any decision that the payment shouldn't have been made. It was restricting access to the account while the matter was looked into which is a normal part of an investigation where a bank has concerns.

I understand that Mr B still lost money as a result of the restrictions due to the time sensitive nature of the purchase. But the cost associated with the risks of a failed property purchase were potentially less than the risk of an entire property being purchased that Mr B wasn't

going to benefit from. It was an unfortunate situation here where whatever the outcome there was a potential risk from First Direct's position. And whilst with hindsight we know there was no risk, at the time, based on the evidence available, I think it's reasonable it referred the matter to the OPG to look into. Overall I'm satisfied it took steps that were proportionate to the risk presented to it.

The attorneys had explained to First Direct throughout, directly and through the solicitor that arranged the POA, the POA did allow the attorneys to make decisions about Mr B's finances. And I accept this may well have included buying a property in his name and I don't think this is in dispute. The attorneys' argument is that once they'd changed the buyer to Mr B, their previous attempt no longer existed and First Direct simply should've treated the second attempt as the attorneys purchasing a property for Mr B. But I don't think this is reasonable.

As I've said the change didn't 'undo' the previous attempt in terms of the concern it raised. And whilst I understand that the POA may have allowed them to purchase a property in Mr B's name, the relevant guidance suggests the POA did not allow the attorneys to buy a property for themselves without first seeking further advice. The fact that they tried to circumnavigate this step, however genuine their intentions turned out to be, reasonably alerted First Direct to a potential risk. In response to this risk, First Direct simply referred the matter to the professional body best placed to look into things. I think all of this is reasonable.

I understand the attorneys' have made the argument that Mr B wouldn't have lost the money either way because property C was being purchased in his name. But the point is that the attorneys behaved in such a way they potentially exposed their intention to use Mr B's money for themselves. They could still just as easily use Mr B's money for themselves even if property C was in Mr B's name, because they would still have complete control of his finances despite the other information available and I've said more about this below.

I've agreed that First Direct did have inaccurate information about some of the points and I've said in the provisional decision they could've investigated this further. But ultimately it is the initial purchase attempt in the attorneys' own names that was the trigger for the investigation. There is no other information that I've seen in this case that First Direct could've obtained that I think reasonably would've allayed concerns relating to this action. The attorneys have said First Direct should've asked it for a wider picture of Mr B's finances for confirmation of how this purchase benefitted him. I appreciate the point the attorneys are trying to make. I understand they feel that a better overview of Mr B's portfolio and how it was being managed by the attorneys would've given First Direct the proof it needed that they were acting in Mr B's interest.

But my response to this comes back to the same points. The attorneys had complete control of Mr B's money. So any management of his portfolio could easily be used to benefit them should they wish to use the money in this way. The investigation was to establish whether they were looking after Mr B overall. Information about how they were managing finances they might be planning to benefit from themselves, wouldn't have shown First Direct what their intentions were.

I can see solicitors – involved in both the property purchase and in setting up the POA - did contact First Direct to try and provide assurances. They confirmed the buyer had been changed to Mr B, but for the reasons given I don't think this was enough to allay First

Direct's concerns. And, whilst the solicitor who arranged the POA might've discussed the situation with First Direct, this doesn't over-ride the POA itself. There were no special instructions within the POA which confirmed Mr B wanted the attorneys to buy themselves a property with his money. And as I've said the relevant guidance sets out that they needed to seek further advice before doing this based on the POA alone.

Overall I don't think there is sufficient evidence I've seen that First Direct could've received or requested from the attorneys that reasonably would've allayed its concerns they might be acting for their own interests. And I'd stress again, all this meant is that a full investigation was carried out by the appropriate body. Which is a reasonable step for First Direct to have taken.

I understand the attorneys have concerns that the information First Direct provided to the OPG influenced its decision to carry out an investigation. The OPG is a separate organisation and I can't comment on its conduct or its decision to investigate the attorneys as it's not within my remit to do so.

What I can say is that I think it's reasonable First Direct contacted the OPG based on the information available and I think it's reasonable that it waited for the outcome of its investigation before allowing the attorneys' unrestricted access to the account.

I have noted the attorneys' comments that the restrictions weren't removed promptly once the OPG's investigation concluded as I'd stated in my provisional decision. The investigation concluded on Friday 8 December 2023 and the OPG contacted First Direct on the same date to confirm this. This email wasn't reviewed until Tuesday 12 December 2023. The remaining balance of Mr B's account was withdrawn on 21 December 2023, nine days after the restrictions were removed.

I appreciate the attorneys had contacted First Direct from 8 December 2023 requesting the restrictions were removed immediately and I do understand they were eager for the situation to be resolved given what they'd been through. But as I outlined in my provisional decision, Mr B is the eligible complainant in this case. When thinking about the impact on him, I don't think it's unreasonable that it took two working days to remove the restrictions in place.

I'm sorry to see Mr B has lost money in this case and that this was unnecessary given it has now been established that the attorneys were acting in his interests all along. And I agree that Mr B has not caused this loss. But overall I'm satisfied First Direct had reasonable cause for concern in this case, and that a reasonable response to these concerns was restricting the account while it waited for the outcome of an investigation by the appropriate body.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 March 2025.

Faye Brownhill
Ombudsman