

The complaint

Mr and Mrs J complain that HSBC UK Bank Plc (trading as First Direct) didn't protect them from an investment scam.

Mr and Mrs J are being supported in making their complaint by a representative. But for ease, I'll only refer to Mr and Mrs J in this decision.

What happened

Mr and Mrs J say that in June 2017 a friend told them about an opportunity of investing in forex trading with a company (who I'll refer to here as 'H'). Mr and Mrs J's friend was already investing in 'H' and put them in contact with a broker (who I'll refer to here as 'B').

'B' met with Mr and Mrs J and provided them with information about 'H' and how the investment worked. They say 'B' persuaded them that *'this would be a very good investment'*.

Mr and Mrs J understood the terms of the investment to be monthly returns of between 3% and 5%, with the capital returned in 12 months.

Other companies (which I'll refer to here as 'P' and 'M') facilitated the investment and the transfer of the funds Mr and Mrs J were investing in 'H'. Mr and Mrs J received a loan agreement from 'P'.

Mr and Mrs J made the following payments by telephone as part of the investment:

| Date | Amount |
|-------------------|----------------|
| 19 September 2017 | £30,000 |
| 12 October 2018 | £50,000 |
| Total | £80,000 |

When asked by First Direct, Mr and Mrs J confirmed the payment details were genuine and that they'd checked them directly with 'P' and 'M'. And in relation to the 12 October 2018 payment, Mr and Mrs J confirmed to First Direct that the payment was for an investment with a company they'd used before ('H') and they were happy it was genuine.

Between October 2017 and May 2019 Mr and Mrs J received monthly returns on their investment totalling £39,500.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively. Mr and Mrs J have since tried to recover their funds by way of the liquidators.

On 1 September 2023 Mr and Mrs J made a complaint to First Direct. In short, they said they'd been the victims of a scam, and that First Direct hadn't done enough to protect them. Mr and Mrs J therefore held First Direct responsible for their loss. They wanted First Direct to refund them together with 8% interest and £1,000 for the distress and inconvenience caused.

First Direct didn't believe Mr and Mrs J had been the victims of a scam, rather it said this was a civil dispute and suggested they look to recover their losses by way of the liquidation process. Mr and Mrs J referred their complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. Essentially, he said First Direct should've asked Mr and Mrs J about the purpose of the payments before processing them. But given there was no adverse information about 'H' or 'P' available at that time, and because Mr and Mrs J were provided with information about the investment - he didn't think further questioning by First Direct would've given it or Mr and Mrs J any obvious cause for concern.

Our Investigator also thought there was no reasonable prospect of First Direct being able to recover the lost funds, nor did he think First Direct needed to pay Mr and Mrs J any compensation.

Mr and Mrs J didn't agree. In summary, they said First Direct had missed an opportunity to protect them and warn them of the risks involved in using unregulated brokers and in investing with unregulated companies.

Mr and Mrs J said they were '*unduly*' influenced by 'B' who encouraged them to proceed with the investment despite its unregulated status. And that they would've taken any advice or warnings given by First Direct seriously.

Mr and Mrs J said they hadn't fully appreciated the risks involved in the investment – both in terms of the promised returns and the lack of regulation. But if this had been pointed out to them by First Direct, they believe '*the scam would've been prevented and [they] wouldn't have lost this money*'.

I've been asked to review everything afresh and reach a final 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.

Having done so, I've decided not to uphold it. I know this is not the answer Mr and Mrs J were hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation they've found themselves in, and I can understand why they'd want to do all they can to recover the money they lost. But I need to decide whether First Direct can fairly and reasonably be held responsible for Mr and Mrs J's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say that I've considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether First Direct could've prevented Mr and Mrs J's loss.

Following a court hearing in July 2020, it's now accepted that Mr and Mrs J have likely been the victims of a scam. But I accept the transactions they made towards the investment were authorised payments. So, Mr and Mrs J are presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as First Direct, ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether First Direct ought reasonably to have held such suspicions or concerns in relation to Mr and Mrs J's payments - and if so, what might've been expected from a proportionate intervention.

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 its dealings with Mr and Mrs J when they made the payments. Specifically, whether it should've done more than it did before processing them – and if it had, would that have made a difference. I also need to decide if First Direct could've reasonably recovered the lost funds.

Arguably, there was justification here for an intervention by First Direct prior to processing Mr and Mrs J's £30,000 payment instruction on 19 September 2017. This was significantly larger than usual payments for Mr and Mrs J's account in the previous six months and was being made to a new payee. The £50,000 would've, in my opinion, also looked unusual. Whilst part of the same investment in 'H', it was to a different payee than the £30,000 payment ('M') and made over a year later.

But for me to find it fair and reasonable that First Direct should refund Mr and Mrs J 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 it ought reasonably to have done so - 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 it liable for not having prevented them from being made.

In thinking about this, I've considered what a proportionate intervention by First Direct at the relevant time would've constituted, and then what I think the result of such an intervention would most likely have been.

To reiterate, First Direct's primary obligation was to carry out Mr and Mrs J's instructions without delay. It wasn't to concern itself with the wisdom or risks of their payment decision. In particular, First Direct didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment First Direct was recommending or even endorsing.

First Direct's role here was to make the payments that Mr and Mrs J had told it to make. Mr and Mrs J had already decided on that investment. And I find that First Direct couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr and Mrs J's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr and Mrs J (which there wasn't here) would've gone far beyond the scope of what I could reasonably expect of First Direct in any proportionate response to a correctly authorised payment instruction from its customers.

That said, I think it would've been proportionate here for First Direct, as a matter of good industry practice, to have taken steps to establish more information about the payments when it had the opportunity to; given the payments were initiated over the telephone.

What matters here is what those steps might be expected to have uncovered at the time. While there may now be significant concerns about the operation of 'H', and the legitimacy of the investment, I must consider what First Direct could reasonably have established during a proportionate enquiry of Mr and Mrs J about their payments back in 2017 and 2018. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'P' were genuine companies and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mr and Mrs J have provided about 'H' and 'P', it appears that allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included a court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either First Direct or Mr and Mrs J at the time their payments were made.

I think it's also likely Mr and Mrs J would've told First Direct that they had documents from 'H' confirming the terms of the investment which at the time, all appeared entirely genuine. This included information about a Financial Conduct Authority (FCA) regulated liquidity provider and that new customers are offered a capital protection scheme. Further, Mr and Mrs J have said First Direct should've warned them about high-risk investments and that the rate of return was unrealistic. But the risks of investing in 'H' were made clear to Mr and Mrs J in documentation received from 'P', where it is also made clear that 'P' isn't regulated by the FCA. 'P' also says:

'It is possible to lose more than your initial investment. Profits and returns are not guaranteed'.

The information from 'P' further states:

'Before you decide to deal with [P] ... you should be aware of all of the associated risks and carefully consider your objectives, financial situation, needs and level of experience. ... [P] recommends that you seek advice from a separate financial advisor. ... you could sustain a total loss of your deposited funds and therefore, you should not speculate with capital that you cannot afford to lose'.

So, it appears that Mr and Mrs J *had* been made fully aware that 'P' wasn't FCA regulated and of the risks involved in the investment, and they were getting advice from a broker ('B'). This would've all been reassuring to First Direct and Mr and Mrs J, and in my opinion, makes it less likely that any warning First Direct might've provided to Mr and Mrs J about unregulated high-risk investments would've resonated with them, as they now claim.

But even if Mr and Mrs J *had* been prompted by First Direct to carry out more checks into 'H' or 'P' – I think it's very unlikely they'd have found anything of concern.

Further to that, by the time of the 12 October 2018 £50,000 payment, Mr and Mrs J had received monthly returns on the 19 September 2017 payment in line with the terms of the investment; and said in the telephone call with First Direct when making the £50,000 payment that they were happy 'H' was genuine. It's also worth mentioning that the £50,000 payment was being made to 'M' – a payment processor for 'P'. 'M' was also a legitimate registered company, which, I believe, would've further reassured Mr and Mrs J (and First Direct) at the time that the investment in 'H' was genuine.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H' and 'P', everything I've seen indicates that those concerns only began to surface in the public domain after the payments were made by Mr and Mrs J.

I've thought next about how Mr and Mrs J found out about the investment. They've said they were introduced to 'H' by 'B', via a friend. 'B' appears to be an unregulated broker.

Had First Direct asked Mr and Mrs J who'd advised them about the investment, then the involvement of 'B' would've likely come to light at the time. But this type of unregulated investment could be entered into without obtaining regulated financial advice; and might be made available to clients of an unregulated broker (as appears to be the case here).

So, the status of the broker and the investment weren't something that would necessarily have indicated 'H' was fraudulent (or that the investment was a scam) at the time Mr and Mrs J asked First Direct to make the payments.

Mr and Mrs J have said they were unduly influenced by 'B' about investing in 'H'. But whilst they might think that now, and with the benefit of hindsight, I've not seen anything to suggest this was the case at the time the payments were made. 'B' provided information to Mr and Mrs J about the investment and how the invested funds were protected, and Mr and Mrs J then decided to invest. They also made two payments a year apart, which, in my opinion, suggests they had no doubts about what 'B' was telling them about the investment in 'H'.

Given this, together with 'B's endorsement of 'H', and the fact Mr and Mrs J were introduced to 'B' by a friend who was also investing in 'H' successfully, I don't think, on balance, that any advice or warning from First Direct about 'B' would've likely resonated with Mr and Mrs J or given them any cause for concern. And any concerns that might've been raised with Mr and Mrs J about 'H' or 'P' would've likely, in my opinion, have been allayed by 'B' (or by the friend already investing in 'H').

All things considered; I don't think it would've been readily apparent in 2017 and 2018 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think First Direct could've uncovered information – especially through proportionate enquiry in response to a payment - that would've led to significant doubts about the legitimacy of 'H' at that point in time. Neither do I think Mr and Mrs J could've uncovered such information at the time – they weren't at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by First Direct to have been proportionate to the perceived level of risk of 'H' or 'P' being fraudulent. I don't think that a proportionate enquiry in 2017 or 2018 would've led to either First Direct or Mr and Mrs J considering 'H' or 'P' being anything other than legitimate. With that in mind, and all considered, I'm not persuaded that First Direct was at fault for carrying out the relevant payment instructions, or for not preventing Mr and Mrs J from making their payments.

In terms of trying to recover the lost funds; I'd expect First Direct to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mr and Mrs J contacted First Direct. Furthermore, both 'H' and 'P' had gone into liquidation by this point and recovery from 'M' wasn't possible as it was acting as a payment processor for 'P'.

Therefore, I can't say First Direct had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'H' and 'P' had gone into liquidation more than three years before.

I have a great deal of sympathy for Mr and Mrs J and the loss they've suffered. But it would only be fair for me to direct First Direct to refund their loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

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 Mrs J and Mr J to accept or reject my decision **before 29 May 2025**.

Anna Jackson
Ombudsman