

The complaint

Mr P is unhappy that HSBC UK Bank Plc, trading as First Direct, decided not to refund him after he was the victim of a scam.

Mr P is using a professional representative to bring his claim. I'll refer to them as W.

What happened

The background facts were set out in detail in my provisional decision to both parties and these are not in dispute. I'll summarise these below:

- Mr P was contacted by C, a crypto investment broker, and encouraged to invest. He was promised returns of 5% a month (approx. 60% per annum).
- Mr P says he carried out online searches and read reviews and no red flags were found about C.
- Mr P made 43 payments totalling £1,879,966 between January and July 2024. He made the payments to a genuine brokerage that helps users buy and sell bitcoin – which I'll refer to as L. He then sent the purchased cryptocurrency to his own crypto wallets, before sending it on to C. Mr P received credits and returns of £40,920.25 from his own crypto wallet. Leaving his loss at £1,839,045.75.
- Mr P also attempted to make several payments from his EMI account to his own crypto wallets. These were declined and the EMI questioned Mr P about the payments. The details of which were set out in my provisional decision.
- Mr P says he realised it was a scam when he was told he would need to pay fees to withdraw his funds.
- W says Mr P's health has been impacted by the scam and he was vulnerable at the time.
- First Direct didn't uphold Mr P's complaint or refund his losses. It said amongst other things, Mr P didn't spot several red flags when deciding to make these payments and when it did intervene Mr P didn't mention cryptocurrency. It wasn't made aware of Mr P's vulnerabilities. And Mr P's account history showed he was an experienced investor and there wasn't proof that the funds were lost to a scam.
- One of our investigators recommended a partial uphold. In summary she thought the payments ought to have been considered as suspicious by First direct and it ought to have intervened. She thought better intervention by First Direct would have exposed the scam. In particular she thought the key to breaking the spell would have been for Mr P to attend a branch for a face to face conversation. She also said Mr P should bear some responsibility for his losses as he didn't stop when there were several red flags or heed the warnings given by his EMI account provider.
- First Direct didn't accept these findings and so the complaint was passed to me.

I issued a provisional decision. In doing so I didn't uphold the complaint. In summary I said:

- Overall, there was a lack of evidence to support the scam claim. There wasn't

persuasive evidence to show how these payments ultimately ended up with scammers. And given the value of Mr P's claim I thought it was unusual he could provide some of the conversation he had with the scammers but not the part that evidenced these payments were linked to a scam. Of the conversations he could produce, it showed a close relationship between him and the scammer, and not one I'd expect to see between client and broker as Mr P described it.

- I set out in detail, the interactions Mr P had with First Direct and importantly, with his EMI account provider. Mr P's EMI asked him several questions at four different points, when he attempted to make payments from his account. It asked:
 - o what the purpose of the payment was;
 - o if he'd carried out any research;
 - o where he planned to send the funds to beyond the crypto platform he was using;
 - o why remote software access was being used on his computer;
 - o copies of his crypto account statement;
 - o to provide copies of any communications with external parties;
 - o if anyone was telling him how to respond to the questions being asked;
 - o the purpose of opening the EMI account;
 - o if he'd invested in crypto before and for how long and if he'd been able to successfully withdraw funds;
 - o the name of the platform he was using;
 - o proof that he was the account holder of the second platform that the funds will be sent on to; and
 - o why he decided to stop the activity of sending funds to the crypto platform.
- It also provided warnings both generally about cryptocurrency scams and specifically about the company he was dealing with. These warnings covered common crypto scam features such as:
 - o being asked to create new accounts on platforms and sending funds to these accounts;
 - o convincing looking posts on social media or share articles;
 - o scammers will convince victims to act quickly to avoid missing out on opportunities;
 - o being instructed on what to do;
 - o being contacted out of the blue;
 - o being offered high returns with little or no risk; and
 - o not being able to access funds on the platform – or being allowed to make small initial withdrawals but once funds are higher being stopped from making further withdrawals or being told to pay fees to release funds.
- He was advised to:
 - o be extra vigilant;
 - o check resources on reputable websites (and it suggested some websites to check);
 - o if anyone was offering financial advice that they should be FCA regulated –

and for Mr P to check if the company was registered;

- discuss large payments and investments with friends and family; and
- to check specific websites where there were negative reviews about C.

Key findings in my provisional decision set out that; even if I thought First Direct ought to have intervened earlier, or asked better questions and provided better warnings, that it only need refund Mr P, if I was persuaded that intervention would have made a difference. In detail I explored why at each of interactions with his EMI, the additional questions and crypto based warnings and specific warnings about C, made no difference. Mr P did not engage with these, he provided answers that didn't correspond with what he was doing and neither Mr P or W, have provided an explanation for this. And Mr P continued to make payments, switching to his First Direct account, when he couldn't process the payments through his EMI account.

I considered that Mr P was an experienced investor, and his First Direct account history showed this. So, I think it was likely First Direct wouldn't have necessarily considered the payments he was making as risky as his EMI did and he would have more likely than not been able to articulate what he was doing even if asked similar questions by First Direct. I didn't uphold the complaint.

W didn't accept. Following the provisional decision W asked and we shared the call recording Mr P had with First Direct and a copy of the in-app chat, Mr P had with his EMI. W rejected the provisional findings saying:

- Too much focus and emphasis had been placed on the intervention by the EMI. It was not Mr P's main bank, it held no long-term account history for Mr P, no funds ultimately exited the account, and funds were being sent to a different payee.
- It agreed the EMI provided the appropriate level of intervention. But that does not absolve First Direct of its own duties.
- The investigator applied contributory negligence. W therefore, didn't understand why this had been reduced and now no refund was being recommended, given the evidence of clear failings from First Direct.
- It provided the detail which showed how the scam operated. Mr P would purchase the cryptocurrency and then send this on to the address provided (by the scammers). All cryptocurrency statements were provided and a report produced by its cryptocurrency specialists. So, it felt the scam had been proved.
- After reviewing the call Mr P had with First Direct, it fell below the expected standard. It says a series of specific questions should have been asked in order to narrow down the scam risk.
- First Direct ought to have asked specific questions about what Mr P was doing. And when it did intervene this wasn't detailed enough and didn't enable the scam risk to be identified.
- By the time First Direct called Mr P, he had already sent over £1.4m to a known cryptocurrency broker. It says this was unusual and a significant amount of money, it argues intervention ought to have occurred before this point.
- First Direct ought to be held partly liable because of its failure to intervene at an earlier point in time and because when it did intervene the questions it asked weren't proportionate.
- It cannot be sure if Mr P would have freely offered all the information, but it would

have become apparent that Mr P would not be able to provide adequate responses that would have left First Direct satisfied he wasn't at risk of financial harm.

- Whilst Mr P believed the investment was plausible the bank ought to have been aware of the hallmarks of a typical cryptocurrency scam.
- A call from First Direct would have had more impact than the in-app chat from the EMI.
- Mr P's previous investment with gold should be distinguished from cryptocurrency. W cites the increase in frauds related to cryptocurrency in more recent years. And it says regardless of Mr P's previous investment experience or history, these payments ought to have flagged.
- Whilst Mr P didn't declare any vulnerabilities, First Direct ought to have been proactively identifying customers who may be at risk. It says large and unusual transfers into high-risk cryptocurrency should have raised concerns.
- First Direct ought to have prevented the losses. It adds contributory negligence ought to apply as well and so W believes a fair and reasonable outcome would be a partial refund of Mr P's losses.

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've carefully considered the points raised by W. Having done so, they don't change my findings on this complaint. I'll address the points raised by W which are relevant to the outcome of the complaint.

Would better intervention have prevented Mr P's losses?

In response to my provisional decision, W has made detailed submissions on the failures by First Direct. But it fundamentally overlooked the key findings in my provisional decision. That being, despite First Direct's failings, with regards to its intervention, I was persuaded, based on compelling and contemporaneous evidence, that even if First Direct's intervention had been proportionate, it wouldn't have made a difference in this instance.

I cannot simply recommend that First Direct refund Mr P, some or all of his losses because, of its failures. I have to be persuaded that any action First Direct ought reasonably to have taken, in the circumstances, would have gone on to prevent Mr P's losses as a matter of causation. And I'm not persuaded it would have.

Mr P's interaction with the EMI is a significant piece of evidence, when making a finding about what is most likely to have happened if First Direct had intervened proportionately as well. It's entirely relevant to the findings in this case and I cannot put this information to one side. W has said the EMI's intervention was proportionate. In its responses it had the opportunity to provide further clarification for Mr P's actions and responses to the questions the EMI asked but hasn't done so with any real detail.

W argues that First Direct ought to have asked a series of specific questions to narrow down the specific scam risk. But Mr P's EMI did this as I've detailed above. All the questions W has proposed First Direct should have asked, Mr P had already been asked by his EMI. And it argues Mr P ought to have been given cryptocurrency warnings and advice on how to protect himself – all of which his EMI provided and all of which, Mr P did not engage with. So I cannot reasonably make a finding that any proportionate (and likely similar) intervention by

First Direct, would have any different impact here. W hasn't acknowledged this and it's the central issue to this complaint.

W says a call from First Direct would have had more impact than the in-app chat from the EMI. And I don't disagree. But I have to put together all the evidence regarding the answers Mr P gave his EMI, and his experience and knowledge of investing, when thinking about how he would've likely responded to questions in a call.

In both the call, and in-app chat, Mr P appeared confident, and he knew what he was doing. He also said he had carried out due diligence. First Direct would also have been aware of Mr P's previous investment history – which the EMI wouldn't have been. So, I'm not persuaded by W's argument that First Direct would have necessarily been more concerned with the payments Mr P was making, compared to his EMI. In fact, I'm persuaded First Direct would very reasonably have been less concerned, given it knew how Mr P operated his accounts, the sums he usually transferred and his ability to make high value investment choices seemingly without any concern or issue in the past. I agree Mr P's previous investments aren't with cryptocurrency and these should be treated with more caution and concern. But as set out in the provisional decision, I didn't think that the payments Mr P made here, as part of the scam, stood out as particularly unusual compared to his usual account activity. But even if they had, I have already gone on to explain why proportionate intervention wouldn't have prevented Mr P's losses.

W says Mr P would have come unstuck if asked more questions by First Direct – but has provided no explanation or detail as to why it thinks this would have been the case. In my provisional decision I set out why I thought Mr P's investment experience as well as what we know he told his EMI, don't support that statement. Whilst W argues First Direct ought to have been aware of the hallmarks of an investment/cryptocurrency scam I wouldn't have expected it to do more than ask Mr P questions and provide warnings. Again, all of which Mr P already received when attempting to make payments from his EMI account.

The EMI also went as far as blocking the payments Mr P was attempting to make. Mr P then switched to using his First Direct account, to avoid the questions and blocks it had put in place.

In the provisional decision I highlighted several concerns I had with the evidence provided and why that put into question the scam itself. Whilst Mr P has shown he purchased cryptocurrency through a legitimate provider and that this was sent on to an address – there is limited evidence about where those funds were then sent to – or why? Who owns those crypto accounts or if they were out of his control at this point. It's possible Mr P ended up with a bad bargain or he could have been scammed. There's limited evidence to make a finding either way. And whilst I appreciate W says many people who are scammed, including Mr P, may delete communications due to stress, he has been able to provide some communication after he's made all the payments. And as I've said these don't look like a typical client broker relationship.

W says First Direct ought to have been on the lookout for vulnerable consumers. As set out in the provisional decision, I've not seen anything to suggest Mr P notified First Direct about any vulnerabilities. And there wasn't anything about his account activity that suggested he couldn't protect himself from this type of scam. He was making large value payments to a variety of merchants and investment platforms before and during this scam.

Overall, I'm not recommending that First Direct refund Mr P's losses. I'm not persuaded it would have prevented Mr P's losses, even with proportionate intervention.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 16 October 2025.

Sophia Smith
Ombudsman