

The complaint

Mr S complains that HSBC UK Bank Plc trading as first direct won't reimburse him after he fell victim to an investment scam.

Mr S is professionally represented in bringing his complaint to our service, but for ease of reading I'll refer to all submissions as being made by Mr S directly.

What happened

Mr S has explained that his nephew had been investing in an apparent property investment scheme for several months and was receiving high returns. The opportunity was therefore recommended to Mr S by his nephew. Mr S met with the business owner in person and also spoke to them by phone and message, before deciding to also invest £20,000 in February 2022.

Mr S initially made a £1 'tester' payment, which was confirmed as received by the firm. He then attempted to make a second payment of £19,999, however this was stopped by first direct for fraud checks. Mr S spoke to first direct by phone and confirmed he was making an investment payment.

He confirmed he was making the investment on his own behalf. He was then asked if he had checked if this was a genuine beneficiary and confirmed he hadn't. The first direct advisor told Mr S to contact the company on a genuine number to verify the details with them. Mr S explained he'd received a contract from the firm, but the advisor said emails can be intercepted, therefore for security purposes he should check the payment details by calling the firm before the payment would be released.

Mr S called first direct back that same day and spoke to another advisor. Again he explained he was making an investment. He's said he's sure the details are correct as his nephew had been investing for a while.

Mr S was told that criminals can pretend to be from the bank, police, or other well known companies. He was asked again how he received the bank details and was told again about interception scams. Mr S confirmed he'd called the firm and checked it had received his £1 payment, which it had. The fraud advisor asked if Mr S had confirmed the bank details with the firm. Mr S explained he hadn't and questioned if that was what he was supposed to have done. The advisor explained he didn't have to, but it had a duty to tell him. Mr S confirmed he was happy to proceed, on the basis that the firm had received his tester payment.

Mr S was then asked if he had checked his investment is authorised by the Financial Conduct Authority by calling them, or checking their website. Mr S confirmed he hadn't, that this was a leap of faith but that knew people who had invested, who would never tell him to invest without their own due diligence. The advisor asked if Mr S therefore thought this was a scam and he explained he didn't, as a few nephews had been investing successfully for some time.

The advisor then explained it couldn't verify the account through Confirmation of Payee

(CoP) checks. Mr S confirmed he was willing to proceed and understood that if he sent his funds to the wrong account he was liable. He asked what he would even ask if he called the investment firm and was told that first direct recommend checking on a phone call that the account details are correct. Mr S explained he was initially confident but that he now felt sceptical. However he confirmed he was confident the account was correct as it had received his tester payment and the payment was therefore processed.

Between March and June 2022, Mr S received returns totalling £3,135. In March 2022, encouraged by the progress of his investment, Mr S decided to invest a further £4,999. When attempting to make the payment via his banking app, Mr S was asked the payment purpose and selected 'making investments'. As a result, he was shown the following warning:

'Caution – this could be a scam

WARNING – if someone has told you to mislead us about the reason for your payment and/or choose the wrong payment type, stop, this is a scam.

Fraudsters can offer what appear to be genuine investment opportunities and may pressure you to make a decision eg to invest your savings or transfer your pension to a new scheme.

What to do before making the payment:

Don't make the payment if you've been cold called, offered guaranteed returns or if you're feeling pressured

Check if the company is genuine and authorised by the Financial Conduct Authority (FCA). If they aren't, take time to talk to an independent advisor before sending any money

Check the FCA hasn't listed the company on their cloned firms page.

Check the person you're in contact with is a genuine representative of their company eg call them using a number you've checked is genuine

For cryptocurrency investments make sure you're making the payment directly to the provider, the online wallet is in your name and only you have access to it

If you're unsure in any way, take time to talk it through with an independent advisor.'

Mr S confirmed he was happy to proceed and the payment again was processed.

Mr S realised he'd fallen victim to a scam when communications with the scammer slowed down and returns stopped. Mr S raised a claim with first direct but it was declined, as first direct considered this was a civil matter between Mr S and the investment firm.

Mr S remained unhappy and referred his complaint to our service.

An investigator considered the complaint but didn't uphold it. She didn't think Mr S had a reasonable basis for believing he was making legitimate payments. She also didn't think that first direct could have stopped Mr S from making the payments, even if it had provided an effective warning, based on his trust in his nephew's guidance.

Mr S disagreed with the investigator, so the complaint has been passed to me for a final decision. As part of my own investigation, I've written to first direct informally, setting out that I thought this was a scam, based on Mr S' testimony and details provided by the bank that

received Mr S' funds. I also set out that I thought Mr S *did* have a reasonable basis for believing these payments were legitimate and that first direct failed to provide an effective warning. I therefore thought that Mr S should be refunded in full, minus a deduction for credits received.

First direct agreed to share 50% of liability and refund Mr S in part – however, it thought Mr S would have proceeded regardless of any warning provided, based on his trust in his nephew and therefore also thought some liability should be shared by Mr S.

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.

It seems first direct is now accepting that Mr S *has* fallen victim to a scam, based on its agreement to reimburse 50% of his losses. I'll therefore proceed to consider whether the offer it has put forward is fair.

First direct is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

* There are further exceptions outlined in the CRM Code, but they don't apply to this case.

Having taken these exceptions into account, my findings are as follows:

- Under the terms of the CRM Code, first direct should have refunded the money Mr S lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- In the circumstances bank should fairly and reasonably refund the money Mr S lost.
- It is not clear how Mr S would have used the money if first direct had refunded him when it should have done, so first direct should also pay interest on the money it should have refunded at 8% simple per year from the date it declined Mr S' claim under the CRM Code until the date of payment.

I have carefully considered first direct's representations about the warning it gave and whether Mr S had a reasonable basis for believing the transactions to be genuine. But they do not persuade me to reach a different view. In short, first direct has suggested that as Mr S trusted his nephew so implicitly, it could not have prevented Mr S from making these scam payments, even if an effective warning under the Code had been provided.

However, I think it's important to remember that the Code's requirement to provide an effective warning is an objective one and therefore where a bank hasn't met this requirement, it isn't for me to determine how a customer may have acted, *had* an effective warning been provided.

In any event, I think first direct's warnings here fell quite notably short of being 'effective' under the Code, the advice provided being centred largely around whether Mr S' payment instructions had been intercepted and how to protect himself. Other than warning him about the FCA register (which he wasn't given much context to) there was no guidance around how an investment scam may look or feel and typical hallmarks of such a scam.

Even if I were to decide that an effective warning wouldn't have impacted Mr S' decision to proceed, this doesn't mean Mr S wouldn't be entitled to a full refund, unless I were to determine that he failed to take appropriate action in response to such a warning, which would otherwise have had a material impact on preventing the scam. Based on Mr S' communications with first direct I can't agree this would be the case. I don't think Mr S' actions have demonstrated he was so determined to proceed with the scam that he would have done so in spite of any effective warnings provided by first direct. On the contrary, when Mr S was told to end the call and check the payment details he had were correct, he made attempts to do so (albeit he didn't seem clear on what he was specifically required to do). Additionally, when told about the dangers of interception scams and a lack of CoP checks, Mr S expressed that he was feeling more sceptical about the payment, even though he had already taken steps to ensure the payee details were correct by sending a test payment. I therefore don't think Mr S was closed off to receiving guidance from first direct on how to protect himself, or that he would've proceeded in spite of more relevant warnings being provided.

I also don't think Mr S proceeded without a reasonable basis for believing he was making legitimate payments. First direct doesn't appear to be disputing this point, based on it having offered a 50% reimbursement, but for completeness, Mr S has explained that he found this investment opportunity through his nephew who had been successfully investing for a number of months. I think it's important not to underestimate the strength of impact this would have in persuading Mr S that this was a genuine opportunity, as without an awareness of other factors such as Ponzi/pyramid schemes, it seems hard to argue why any fraudster would choose to provide ongoing returns for a scam investment. Therefore, without a warning advising of such features, I can understand why Mr S was persuaded on the legitimacy of the opportunity being offered. The firm was also, at the time, registered on Companies House and Mr S had met the firm's director, which I think would have further reassured him on the legitimacy of the opportunity.

For these reasons I don't think there are any exceptions under the CRM Code that first direct may rely on to not provide Mr S with a full refund.

My final decision

My final decision is that I uphold Mr S' complaint in full. I direct first to reimburse:

- All payments Mr S made towards the scam (totalling £24,999) minus credits received in return (totalling £3,135)
- Apply 8% simple interest from the date first direct declined Mr S' claim under the CRM Code, until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 December 2025.

Kirsty Upton
Ombudsman