

The complaint

Mr E complains that HSBC UK Bank Plc (trading as First Direct) won't refund money he says he lost to an investment scam.

Mr E is being supported in making his complaint by a representative. But for ease, I'll only refer to Mr E in this decision.

What happened

The background to this complaint is familiar to both parties, so I'll only refer to some key events here.

Mr E has said that, via a property networking group, he was introduced by an individual (who I'll refer to here as Mr C) to an investment opportunity in forex and commodities trading (with a company I'll refer to here as 'T'). Mr E was told he'd receive a return on his investment of between 30% and 60%.

Mr E has said that before deciding to invest with 'T' he:

"verified them by examining their brochures and documents, as well as checking with [Mr C], who showed me the monthly returns he consistently received into his account. [Mr C] assured me that these returns were genuine and substantiated his claim by displaying his account to show the received returns".

Mr E further added that he met with both Mr C and associates of 'T' to discuss the investment. He said:

"They were highly knowledgeable and professional. They asked me for ID documentation to start. [Mr C] carried out weekly seminars and showed other people getting these returns".

And that he was told by Mr C that it is was *"only a matter of time"* before 'T' would be regulated by the Financial Conduct Authority (FCA).

On 7 July 2022 Mr E signed a letter of consent to open an account with 'T'. This document also confirmed 'T's regulatory status abroad.

Mr E made the following transfers as part of the investment. He said the payments were made to Mr C and one of his relatives, (Mr JC), because Mr C told him he would then transfer the funds to Mr E's account with 'T'.

Mr E initially said the payments were for the purchase of currency via the peer-to-peer (P2P) market. He's since said this wasn't the case, and that individuals were unknowingly acting on behalf of 'T' by taking money from investors and converting that into US dollars on 'T's trading account.

Date	Amount	Payee
29/9/22	£7,476	Mr C
4/11/22	£15,000	Mr JC
Total	£22,476	

First Direct asked Mr E for the purpose for each payment but didn't flag them as suspicious, saying they were in line with Mr E's normal account usage.

Mr E has said he was unable to withdraw any of his funds from 'T'. And that 'T' converted investors' money into its own crypto currency coin, which he says is now considered worthless. Because of that, Mr E believes he's been the victim of a scam.

First Direct doesn't think it did anything wrong. It said Mr E selected the reason for each payment as 'paying friends and family' – which meant it was unable to provide him with meaningful investment scam warnings.

First Direct suggested that 'T' was a legitimate investment, and that Mr E should take the matter up with Mr C and Mr JC.

Mr E referred his complaint to the Financial Ombudsman. He argued that First Direct hadn't done enough to protect him, and he wants his funds returned, together with 8% interest.

Our Investigator didn't uphold the complaint. In summary, she explained why the Contingent Reimbursement Model (CRM) Code didn't apply to Mr E's claim. She then noted that she hadn't seen conclusive evidence that Mr E had been the victim of a scam. And even if First Direct had stepped in before processing the payments, our Investigator thought it unlikely this would've prevented Mr E's loss.

Mr E disagreed and asked for an Ombudsman's decision. In short, he argued 'T' was a scam and that this could've easily been uncovered by First Direct if it had intervened appropriately in his payments.

Mr E has also argued that the payments should be reimbursed under the CRM Code.

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 this complaint for largely the same reasons as our Investigator. I know this is not the answer Mr E was hoping for, and so this will come as a disappointment. I'm really sorry to hear about the situation he's found himself in, and I can understand why he'd want to do all he can to recover the money he lost. But I need to decide whether First Direct can fairly and reasonably be held responsible. Overall, I've decided that it can't be. I'll explain why.

In this decision I've focussed on what I think is the heart of the matter here. As a consequence, if there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I consider is a fair and reasonable outcome. Our rules allow me to do this, reflecting the informal nature of our Service as a free alternative to the courts.

As such, the purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by the parties to this complaint, and reach what I think is an independent, fair and reasonable decision, based on what I find to be the facts of the case.

First, I'll address Mr E's point that the payments he made to individuals should be refunded under the CRM Code.

Even if I were to make the finding that Mr E had been the victim of a scam, from what he's explained about the payment journey in relation to the payments to Mr C and Mr JC, the CRM Code wouldn't apply here. I'll explain why.

The CRM Code only applies to certain types of payment made, in pounds sterling, between accounts based in the UK. But Mr E has explained that, on the advice of Mr C, he sent funds to both Mr C and Mr JC who then transferred those funds to an international account held by 'T' to convert into currency to facilitate the trading. In those circumstances, where the funds were lost to an international account, the CRM Code doesn't apply.

I've thought next about whether there's evidence here of a scam. Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some complaints simply involve high-risk investments that resulted in disappointing returns or losses. Some traders may have promoted these products using sales methods that were arguably unethical or misleading.

However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they don't necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

It isn't in dispute that Mr E authorised the disputed payments. The payments were requested by Mr E using his legitimate security credentials provided by First Direct. In line with the Payment Services Regulations 2017, consumers are liable for payments they authorise. First Direct is expected to process authorised payment instructions without undue delay.

First Direct also has obligations to help protect customers from financial harm from fraud and scams. Those obligations are however predicated on the funds having been lost to a fraud or scam.

Mr E strongly believes that 'T' was operating a scam, and that First Direct ought to have intervened in his payments. But on researching 'T', I can see that it was incorporated in an overseas jurisdiction. It was regulated by the financial services regulator in that jurisdiction at the time of the disputed payments and remained regulated until November 2024 when it had its licence revoked. This was two years after Mr E made his last payment.

While regulatory requirements can vary from one jurisdiction to another, in my opinion, a scammer is highly unlikely to want *any* kind of regulatory oversight, given the likelihood of its true purpose being discovered.

I can see that there have been some warnings published on the International Organizations of Securities Commissions (IOSCO) website about 'T' and its associated companies. However, I do not think that these warnings demonstrate that Mr E fell victim to a scam.

There were also some changes around licensing towards the end of 2024 for 'T', but that isn't enough for me to say a scam was taking place, especially as operational changes can take place at different times. Furthermore, I'm aware that some investors, had (and still have) access to their investment with 'T' but haven't withdrawn it because of the drop in its value.

Taking all this into account, while all this information does indicate that there may have been some poor business practices in some areas, it's not enough evidence that 'T' was set up to defraud customers, as Mr E has claimed.

For completeness, even if I were to accept that Mr E had been scammed and suffered the claimed loss, I don't think First Direct ought to have done more to protect him. I'll explain why.

From looking at Mr E's statements from the preceding months, I can see a significant number of payments both similar and much higher in value to the payments in dispute here; and sent to various payees. Further to that, the disputed payments didn't, in my opinion, indicate a pattern of fraud. They were made two months apart and were to different payees; and they left the account with a healthy balance.

Given all this, I think it's reasonable that First Direct didn't view the disputed transactions as suspicious given they were in line with Mr E's normal account activity. I don't therefore find that First Direct missed an opportunity to step in here.

Further to that, for me to find it fair and reasonable that First Direct should refund the payments to Mr E would require 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 (which I don't) — 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 E's instructions without delay. It wasn't to concern itself with the wisdom or risks of his payment decisions.

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 with 'T' wasn't an investment First Direct was recommending or even endorsing.

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

Taking such steps to assess suitability without an explicit request from Mr E (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.

If First Direct had asked Mr E about either of his payments, I don't think his likely responses would've been of concern to First Direct. I say that because Mr E thought the investment was entirely legitimate – having carried out his own research, checked 'T's performance and connected with other investors who'd made withdrawals. He'd also met with Mr C in person and was reassured by the regulatory status of 'T' – including the assurances from Mr C of 'T's likely future regulation by the FCA.

And even if First Direct had encouraged Mr E to carry out further checks into 'T', I think it's likely, on balance, those checks would've resulted in further confirmation of 'T's regulation (albeit overseas) and being directed to the regulator's website.

Furthermore, there wasn't much adverse information about 'T' until late 2023; and most negative reviews were about delays with withdrawals, or customer service issues - which I'm aware investors were made aware of via 'T's chat group.

It appears that some scam reviews appeared about 'T' from October 2022, with mention of funds being turned into its own crypto currency coins; and questions raised about the license of 'T'. But again, this was announced to investors in advance.

I think it's also of significance here that Mr E was being heavily guided through the investment process by Mr C. He's demonstrated that he had a high level of trust in Mr C at the time the payments were made - so much so that Mr E made the payments direct to Mr C and his relative (Mr JC) to be invested on 'T's platform. Mr E has said Mr C kept him regularly updated on the investment and *"appeared to be managing the revenue and returns"*. Mr E also said:

"The impression was that the trading account was receiving interest ... [Mr C] advised [him] to leave the compound and the monthly interest being shown made and advised [him] that he should increase his investments".

In addition to that, Mr C told Mr E he was also investing in 'T' - allowing access to his trading account to reassure Mr E of the investment's performance and the rate of return.

So, if First Direct had raised any concerns about 'T', I think there's a strong possibility that those concerns would've been allayed by Mr C, or by other investors that Mr E was in contact with via 'T's group chat.

All things considered, I can only reasonably expect any intervention or enquiries made by First Direct to have been proportionate to the perceived level of risk of 'T' being fraudulent.

And even if I had been persuaded, from the evidence I've seen, that 'T' was a scam, I don't think, on balance, that a proportionate enquiry would've led to either First Direct or Mr E considering 'T' 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 E from making his payments.

On a final note, I've considered whether, on being alerted to the scam, First Direct could reasonably have done anything to recover Mr E's losses, but I don't think it could.

Given the passing of time between the payments being made and Mr E alerting First Direct (around 16 months), I think it unlikely any attempt to recover funds from the beneficiary accounts would've been successful. And given Mr E has confirmed the funds were transferred from the beneficiary accounts onto 'T's platform and converted into US dollars – it seems unlikely any funds would've been recoverable.

I have a great deal of sympathy for Mr E 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 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

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision **before 30 September 2025**.

Anna Jackson
Ombudsman