

The complaint

Mr S complains that HSBC UK Bank Plc trading as first direct ("First Direct") won't refund payments he made as part of a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, I understand it to be as follows.

Mr S explains that he discovered an investment opportunity after an ex-colleague of his father's mentioned it in passing. Mr S then went on to carry out his own independent research into the company, including discussing the investment with multiple individuals who'd already made substantial withdrawals from the investment fund.

The investment company will be further referred to as "Company A".

Mr S made contact with the directors of Company A and, after numerous conversations and further research, made two payments of £25,000 to another account in his name, held with a different financial institution, on 17 December 2018. These funds were subsequently sent from Mr S's other account to Company A the next day.

Over the coming months, Mr S received regular updates and evidence as to the performance of his investment. He then agreed to invest a further £50,000 on 16 July 2019. This payment was made from another financial institution and does not form part of this complaint against First Direct.

Around six months after his investment, Mr S became aware of some difficulties other investors were having in withdrawing their funds. After further investigation, and further developments with Company A and its director, Mr S felt that he'd been the victim of a scam. Mr S complained to First Direct that he'd fallen victim to a scam. He said that First Direct failed to intervene to ensure that the payments were genuine, and that he wasn't the victim of a scam.

First Direct declined Mr S's complaint on the basis that they had a legal obligation to process the payments, as instructed. They also felt that this was a civil dispute between Mr S and Company A. Unhappy with this response, Mr S's complaint was referred to our service through a professional representative.

An investigator looked into Mr S's complaint but didn't uphold it. The investigator said that they didn't think there was sufficient evidence to demonstrate that First Direct could've identified that Mr S was falling victim to a scam if they'd have intervened at the time the payments were being made.

Mr S disagreed with the investigator's findings. In summary, Mr S believes that there were enough concerning details relating to Company A and the investment which would've alerted First Direct to the fact he was being scammed. So, intervention from First Direct at the time of the payments would've prevented his loss.

As the complaint couldn't be resolved by the investigator it was been passed to me for a decision.

Having reviewed the case, I reached the same answer as the investigator but for slightly different reasoning. I also considered the additional points raised by Mr S following the investigator's assessment. So, I issued a provisional decision giving both parties a chance to provide any further evidence or arguments they wanted to be considered before I issued a final decision.

What I provisionally decided – and why

In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr S and his representative have provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Mr S's complaint. This is not meant to be a discourtesy to Mr S, and I want to assure him I have considered everything they've submitted carefully.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a bank such as First Direct is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Here it's not in dispute that the payments were authorised, so the starting position is that First Direct isn't liable for the transactions.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

First Direct also has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

Taking these things into account, I need to decide whether First Direct acted fairly and reasonably in its dealings with Mr S.

Has Mr S fallen victim to a scam?

The Financial Conduct Authority handbook defines authorised push payment (APP) fraud as:

'a transfer of funds by person A to person B, other than a transfer initiated by or through person B, where:

- (1) A intended to transfer the funds to a person other than B but was instead deceived into transferring the funds to B; or*
- (2) A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent.'*

So, in order to reach my decision on this complaint, I've considered the purpose for which Mr S made, and Company A received, the payments. And, if there is a significant difference in these purposes, whether I can be satisfied that this difference was as a result of dishonest deception.

Mr S states that he made the payments in order for Company A to invest his funds in futures and options trading. So, I've gone on to consider what purpose Company A had in mind and whether that was in line with the purpose Mr S made the payments.

Having reviewed the evidence provided by Mr S there's no detail as to what the investment is in or how Company A intends to use Mr S's funds. Rather, Mr S's agreement with Company A refers to a loan between the two parties. This makes it difficult for me to confirm exactly what was agreed between both parties in relation to how Mr S's funds would be used.

That said, even if I were to accept that Company A agreed to use Mr S's funds to invest in futures and options trading, I've seen no evidence which demonstrates that they failed to do so. Because of this, I'm not satisfied that Mr S's funds were not used for the agreed purpose. Mr S has provided a lot of evidence relating to current investigations by law enforcement. But none of this evidence demonstrates that Mr S's funds weren't used in the agreed manner by Company A or that they've acted fraudulently in their conduct with Mr S.

I should also state that even though Company A's directors may be under investigation by a statutory body, the correspondence detailing this doesn't give any detail as to why this action is being taken or whether this is related to their actions as a director of Company A. Furthermore, an investigation by a statutory body isn't, in and of itself, proof that fraud has occurred.

Mr S has also made a number of submissions relating to concerning features of the investment which suggest that he is the victim of fraud. Notably, Mr S has referred to the lack of regulation of Company A, the unrealistic returns offered at the outset and the guaranteed returns they promised on his investment.

Given the ambiguity of the loan agreement between Mr S and Company A, I'm unable to see in which capacity they were acting and whether their actions required the regulation of a regulatory body. But, even if they were acting outside of their regulatory capacity, that doesn't necessarily mean that they'd set out to defraud Mr S.

Further to this, the agreement doesn't confirm what the funds were going to be used for, so I'm unable to agree that the rate of return was unrealistic.

Taking all the above into account, I'm not satisfied that Mr S has been able to sufficiently demonstrate that his funds weren't used for the agreed purpose or that Company A. took his funds for a different purpose in mind. Because of this, I'm unable to agree that he is the victim of an APP fraud as defined by the FCA Handbook.

Should First Direct have prevented the payments?

Mr S feels that First Direct should've done more to prevent the payments at the time they were being made, given their high value and their unusual appearance in contrast with his typical account activity.

As far as I can see, Mr S called First Direct prior to the second payment debiting his account as it didn't process correctly when he attempted to make the payment via his mobile banking app. The First Direct member of staff briefly discussed the payment with Mr S but did not discuss the purpose of the payments or ask questions to determine whether Mr S may be at the risk of financial harm.

As referenced earlier in my decision, First Direct has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. That said, First Direct has no obligation to protect its customers from bad bargains or poor investment choices.

As I don't believe Mr S is the victim of an APP fraud, and that this is a civil matter between Mr S and Company A, I'm satisfied that First Direct haven't failed any of their obligations by not discussing the possibility of these payments being made as part of a scam with Mr S prior to them debiting his account.

For completeness, even if this were a scam, I'm not satisfied First Direct ought to have prevented Mr S's loss. In his original submission, Mr S claims that he'd done substantial research into the company for over a year and had spoken to a number of satisfied investors. Mr S knew these investors were receiving returns and had no reason to believe that Company A was a scam. Based on this, I don't think that First Direct would've, or should've, identified that Mr S was at the risk of financial harm at the time of the payments.

Overall

Based on everything I've seen, I'm not satisfied that Mr S has fallen victim to APP fraud as defined by the FCA Handbook or that First Direct should be held liable for failing to prevent his loss at the time the payments were being made.

My provisional decision

My provisional decision was that I did not intend to uphold this complaint against HSBC UK Bank Plc trading as first direct.

Responses to my provisional decision

Our service received no response from Mr S, Mr S's representative or First Direct in response to my provisional decision.

As the deadline for responses to my provisional decision has expired, I'm going to proceed with issuing my final decision.

What I've decided – and why

As no new evidence or arguments have been put forward by either party, I see no reason to reach a different answer than I did in my provisional decision.

I'm not satisfied that Mr S has been able to sufficiently demonstrate that his funds weren't used for the agreed purpose or that Company A. took his funds with a different purpose in

mind. Because of this, I'm unable to agree that he is the victim of an APP fraud as defined by the FCA Handbook.

Furthermore, as I don't believe Mr S is the victim of an APP fraud, and that this is a civil matter between Mr S and Company A, I'm satisfied that First Direct haven't failed any of their obligations by not discussing the possibility of these payments being made as part of a scam with Mr S prior to them debiting his account.

Overall, I'm not persuaded that Mr S has fallen to a victim to an APP fraud as defined by the FCA Handbook or that First Direct have acted unfairly in declining to reimburse his loss.

My final decision

My final decision is that I don't uphold this complaint against HSBC UK Bank Plc trading as first direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 July 2025.

Billy Wyatt
Ombudsman