

The complaint

Ms C complains HSBC UK Bank Plc (trading as First Direct) won't refund money she lost as part of a crypto investment scam.

Ms C is supported in making her complaint by a representative, but for ease, I'll refer to Ms C throughout this decision.

What happened

Ms C has explained that she was looking to invest and came across a trading company online (which I'll refer to here as 'T') being advertised by a prominent celebrity money advice expert.

Ms C has said that before deciding to invest, she checked 'T's website, as well as checking online reviews and believed she was dealing with a genuine company. Unfortunately, it seems the trading company Ms C was dealing with was a clone of a legitimate FCA registered company.

After making an initial small investment, Ms C was contacted by a broker from 'T' (the scammer) who promised her high rates of return.

Ms C has said the scammer told her to download remote access software, open accounts with legitimate crypto exchanges, and to open an account with an EMI provider (which I'll refer to here as 'R').

Ms C transferred funds to her account with 'R' from her existing account with another bank (Bank C) having first transferred funds to Bank C from her First Direct account. To fund the scam, Ms C also took out several loans that were paid into her First Direct account.

Between 10 July and 8 August 2024 Ms C made several transfers (ranging from £50 to £30,000) totalling just over £150,000 from her First Direct account to her account with Bank C. From there, the funds were forwarded to Ms C's account with 'R' and then onto 'T' where they were unfortunately lost to the scam.

First Direct didn't flag any payments as suspicious.

Ms C has explained that she could see from her account with 'T' that her profits were increasing, and that when she wanted to make withdrawals, the scammer said she needed to make further payments, which she funded by way of loans.

Ms C thought her profits would then be returned to her and the loans repaid, but when this didn't happen and the scammer stopped contact, she realised she'd been scammed.

Ms C reported the matter to First Direct. In summary, she thought First Direct hadn't done enough to protect her. First Direct thought it had done nothing wrong given Ms C was transferring funds to an existing payee which was an account in her name (Bank C).

One of our Investigators considered the complaint but didn't uphold it. She thought First Direct should've questioned Ms C about her payments, given their size and velocity, and because of the number of large credits (loans) into the account. But she didn't think Banking Protocol was warranted, nor did she think any intervention from First Direct would've likely prevented Ms C's loss because she'd misled 'R' when it had spoken to her, and the loan companies, albeit because she was being guided by the scammer. And that Ms C had been

under the impression she was dealing with a legitimate FCA regulated trading company, all of which contributed to First Direct being unable to uncover the scam.

Finally, our Investigator thought there was no reasonable prospect of First Direct being able to recover the lost funds at the point it was alerted to the scam. Nor did she think there were grounds for First Direct to compensate Ms C for the trouble and upset caused.

Ms C disagreed and asked for an Ombudsman's final decision. In short, she agreed with our Investigator that First Direct should've flagged some of the payments as suspicious, but she thought it was unfair that we'd made assumptions on how she'd have likely responded to First Direct's warnings based on how she'd responded when questioned by 'R', particularly given she thought R's interventions were insufficient.

Ms C also pointed out that one of the loan companies hadn't approved a loan, which she said demonstrated that the advice she was given by the scammer was insufficient to persuade the loan company that the loan was for legitimate purposes. And so, Ms C said First Direct should've also been able to identify inconsistencies in her testimony; and applied an appropriate level of scrutiny to uncover the scam. She also thought it was appropriate for Banking Protocol to be invoked.

Ms C also maintained that she would've seen the FCA warning about the genuine trading company being cloned if she'd been advised to check the FCA register.

Finally, Ms C referenced other cases upheld by the Financial Ombudsman in support of her complaint.

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 reached the same conclusion as our Investigator and for largely the same reasons. I'll explain why.

But first, I would like to say that if there's a submission I've not addressed; it isn't because I've ignored the point. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether First Direct was responsible for Ms C's loss.

I should also point out that whilst being mindful of previous decisions made by the Financial Ombudsman, I review each case on its own merits. And although, for background and context, I've considered Ms C's complaints about Bank C and 'R', my findings here relate only to the actions of First Direct.

As a starting point, Ms C doesn't dispute that the payments were made in line with her instructions to First Direct. So, although she didn't intend the money to go to the scammer and believed that her money was going to a legitimate investment, under the PSRs and the terms of her account, Ms C is presumed liable for her loss in the first instance.

However, taking into account the regulatory rules and guidance including the Consumer Duty, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for First Direct to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.

The question then arises whether First Direct ought reasonably to have held such suspicions or concerns in relation to Ms C's payments (individually or collectively) — and if so, what might've been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if First Direct acted fairly and reasonably in its dealings with Ms C when she made the payments. Specifically, whether it should've

done more than it did before processing the payments – 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.

Should First Direct have intervened in the payments?

When considering this point, I've kept in mind that banks, such as First Direct, process high volumes of transactions each day, and that there's a balance for First Direct to find between allowing customers to be able to use their accounts and questioning transactions to confirm they're legitimate.

I do however agree with our Investigator, and with Ms C, that arguably First Direct should've questioned her about the payments given their value and velocity – despite the fact they were being made to an account in her own name with Bank C, who was an existing payee.

In terms of Banking Protocol, I agree with our Investigator that it's unlikely the information Ms C would've provided would've given it sufficient cause for concern, so much so that Banking Protocol would've been invoked. I accept that a human intervention on several of Ms C's payments was justified but based on how Ms C responded to 'R', I think it's more likely than not that she'd have been able to reassure First Direct that the payments were for legitimate purposes, negating the need to invoke Banking Protocol.

And, as I'll go on to explain, I'm not persuaded that *any* level of intervention by First Direct in any of Ms C's scam payments would've likely prevented her loss.

Would intervention by First Direct have prevented Ms C's loss?

For me to find it fair and reasonable that First Direct should refund the payments to Ms C would require more than a finding that it should've done more to intervene when she made her payments. Crucially, I'd also need to find that but for that failure, the subsequent loss would've been avoided.

I've given this point very careful thought – and have addressed Ms C's concerns about the robustness of 'R's interactions with her in my decision relating to her complaint about 'R'. So, I don't think it's necessary to repeat that all here. But I will address Ms C's additional points below.

I appreciate that we can never know for certain how an interaction between First Direct and Ms C about her payments would've played out. But I must make a finding, on balance, what I think is most likely to have happened. In doing that, I've taken consideration of what happened when Ms C had several interactions with 'R' – who provided her with crypto investment warnings, both verbally and in writing that I think were proportionate and relevant to Ms C's situation. And yet none of those warnings resonated with Ms C – and so I can't reasonably conclude that a similar level of scrutiny from First Direct would've likely resonated with Ms C and broken the spell she was under.

Ms C has said that the fact she'd been unable to provide a convincing story to a loan company as to why the loan was needed shows she'd have likewise been unable to persuade First Direct that the payments were for legitimate purposes. I can understand the point Ms C is making here, but in taking account of all the surrounding circumstances, I'm not persuaded that a loan being refused sufficiently evidences that First Direct could've uncovered the scam and prevented Ms C's loss. I'll explain why.

I've not got access to the phone call between Ms C and the loan company, and so I can't say for certain what it asked Ms C and how she responded. But the loan company has told us that Ms C was unable to demonstrate that the loan funds were to be used for the purpose she stated (home improvements). It said she was unable to provide details of what the home improvements were and was evasive when questioned around potential scams.

This, in my opinion, is a different scenario to when Mr C was questioned by 'R' – and how I believe conversations with First Direct would've likely played out. Ms C was able to provide

clear and consistent responses to 'R', she was receptive to the questions she was asked and engaged in the process. It was those responses (albeit Ms C wasn't honest about the true situation she'd found herself in) that satisfied 'R', and I maintain would've likely also satisfied First Direct, that Ms C's payments were for a legitimate purpose.

In terms of the FCA warning about clone companies, I accept there was a warning which predated Ms C's payments. But from looking at the scam chat, I'm not persuaded, on balance, that Ms C would've likely been concerned enough to make those checks if advised to do so by First Direct. Her first point of reference for any query was always the scammer – where she sought advice almost daily on how to move things along. This is despite her having regular contact from 'R' (three phone calls), when she was told on more than one occasion of the risks of a third party being involved and of not providing accurate information when questioned by her bank.

And because of the apparent trust she had in the scammer, and her consistent reliance on the scammer for reassurance and guidance, even if Ms C *had* seen the FCA clone warning, I think it's likely she'd have sought reassurance from the scammer that 'T' was legitimate – particularly because she's said she was given "*access to a sophisticated and professional portal*" which showed real time trades in line with what the scammer was saying and she could see her deposits.

All this leads me to conclude that it's more likely than not, on balance, that Ms C would've proceeded with her payments – even if First Direct had gone further in alerting her to the risks involved and the checks she should make. Ms C was clearly completely under the spell of the scammer – at no time questioning the advice she'd been given, despite clear warnings from 'R' about the prevalence of coaching being used as part of investment scams.

Taking all this into account, I'm not persuaded, in the circumstances of this complaint, that any proportionate intervention from First Direct would've likely prevented Ms C's loss on any of her payments.

Did First Direct do enough to try and recover the lost funds?

The payments were sent to an account in Ms C's own name (Bank C) and in her control, and then onto 'T' (via 'R'). So, no funds remained, but if they had, they would've been available for Ms C to access. I can't therefore conclude that First Direct had any reasonable prospect of recovering the lost funds.

I have a great deal of sympathy for Ms C and the loss she's suffered, as I appreciate it is a significant sum of money. But it would only be fair for me to direct First Direct to refund her loss if I thought it was responsible – and I'm not persuaded that this was the case. For the above reasons, I think First Direct has acted fairly and so I'm not going to tell it to do anything further.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision **before 20 February 2026**.

Anna Jackson
Ombudsman