

## Complaint

Ms C complains that HSBC UK Bank Plc, trading as First Direct, won't refund £2,600 which was stolen from her bank account due to a third party scam.

HSBC UK Bank Plc says they're not liable for the loss because Ms C authorised the payment and they could not have reasonably intervened, or done more to recoup the money from the receiving bank.

## Background

On 10 September 2018 Ms C got a call from someone claiming to be from HM Revenue & Customs (HMRC). The caller said she hadn't paid her taxes and owed HMRC money. The caller convinced Ms C they were genuine and, via online banking, she made a payment of £2,600 to the scammer's account at 2:37pm. Ms C made further payments to the fraudsters via a third party bank account and I'll be considering these in a separate decision.

After making these payments, Ms C spoke to her husband and realised she'd been scammed. Ms C called First Direct to report the incident at around 10:39pm that night. First Direct contacted the beneficiary bank, I'll call N, on the 11 September 2018 to see if any of Ms C's money could be recovered. But Bank N responded that no funds remained.

Our investigator looked into Ms C's complaint but didn't recommend that the complaint be upheld. They believed that the transaction *wasn't* unusual or out of character and that it did what it could to help her recover the money once it became aware of what had happened.

Ms C disagreed with our investigator's findings. In summary she said:

The bank could monitor more thoroughly where the funds are being transferred to. On making the payment Ms C thought it was being sent to an account in her name, and argued First Direct should have identified that she didn't hold an account with the receiving bank and therefore prevented the scam. And blocked the payment.

Because Ms C didn't accept our investigator's findings it's been passed to me for a decision.

## My findings

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 I'll explain why below.

I accept that this was an 'authorised payment' even though Ms C was the victim of a sophisticated scam. She used her security credentials to request the payment. So, although she did not intend the money to go to the scammers, under the Payment Services Regulations 2017, and the terms and conditions of her account, Ms C is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider First Direct should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

So, taking all of this into account, I need to decide whether First Direct acted fairly and reasonably in its dealings with Ms C when she made the payment of £2,600 to a scammer, or whether it should have done more than it did.

Taking everything into account, I don't think the payment was particularly suspicious or *unusual* enough to say First Direct ought to have had concerns that Ms C was being scammed. I say this because the amount Ms C transferred wasn't particularly unusual for her and she accepts she authorised it. I have noted that Ms C's balance was taken down to double figures once the payment was made – and I'd likely regard this as suspicious had this been unusual for Ms C, or payments were due out of her account near that time which couldn't be honoured. However, I'm satisfied that the low balance isn't necessarily a rare occurrence for Ms C – and I can't see any standing orders or direct debits, near the time of the low balance, which weren't or wouldn't have been honoured because of the transfer. Overall, having reviewed her account activity in the weeks' and months' leading up to the transaction, I don't think the transaction was sufficiently suspicious to conclude First Direct ought to have identified that it may be potentially fraudulent.

Ms C made the point that she gave her own name as the reference in making the payment and that the beneficiary account was presumably held in a different name. She's asked how the payment still went through despite the apparent mis-match. However, as First Direct explained to her, the primary details it used were the sort code and account number. It's true that banks are now required to check that account names match who the sender believes they're sending money to – however this wasn't the case at the time. And I realise this will be disappointing to Ms C but I'm unable to conclude that First Direct should have carried out this check and identified the discrepancy.

For these reasons I wouldn't have expected First Direct's fraud detection measures to have been triggered or therefore for the bank to contact Ms C.

*Did First Direct do enough to try to recover the stolen funds?*

When Ms C told First Direct that she'd been scammed the bank contacted Bank N the next day to see if any of her money could be recovered. Banks have a responsibility to contact the receiving bank *immediately* after being notified about a scam. It's clear that First Direct didn't take action immediately after being notified in Ms C's case. Bank N have confirmed that Ms C's money was moved on by the time First Direct did make contact, however it's important for me to consider if First Direct had contacted Bank N immediately after being

notified by Ms C whether any funds would have been recovered. I've contacted Bank N for more details regarding exactly when the money was transferred out. Unfortunately it's not been possible for them to obtain this information. However, it's not unusual in scams like this for the fraudsters to withdraw funds very quickly. So, on balance I'd be surprised if funds did remain in the scammers account when Ms C contacted First Direct just over eight hours after the scam. And I haven't seen any evidence to suggest any funds would have been recovered even if First Direct had acted sooner.

I realise this will be very disappointing to Ms C, but for the reasons I've outlined above I won't be asking First Direct to do anything further here.

### **My final decision**

My final decision is I don't 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 30 January 2021.

Jeff Burch  
**Ombudsman**