

## **complaint**

Mrs T complains about some payments from her account with HSBC Bank plc, trading as First Direct, which she says she did not make or authorise. She says that payments were made against a cheque before it had cleared and that the cheque was returned unpaid.

## **background**

A cheque for £49,850.00 was paid into Mrs T's account in October 2014. Payments totalling more than £30,000 were then made from the account using Mrs T's debit card before the cheque was returned unpaid, leaving Mrs T's account overdrawn. She complained to First Direct but was not satisfied with its response so complained to this service.

The adjudicator did not recommend that this complaint should be upheld. He concluded that Mrs T had been the victim of a very deceptive scam which left her in a difficult financial position. But he said that First Direct hadn't contributed to the loss she'd suffered – it was caused by the fraudster's deception and abuse of the cheque clearing cycle. He concluded that First Direct hadn't made any significant mistakes or treated Mrs T unfairly.

Mrs T has asked for her complaint to be considered by an ombudsman. She says, in summary, that:

- she expressly asked First Direct that there was to be no overdraft on her account;
- she did not pay the cheque in and was not expecting a cheque;
- she only gave her details and card to her friend to have the account verified;
- she did not make the payments against the cheque;
- First Direct did not check those payments with her (even though the cheque hadn't cleared);
- First Direct stopped one payment so should've stopped the others;
- these events have affected her health and she is receiving treatment from her doctor.

## **my findings**

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

Mrs T has clearly been the victim of a scam – she has been badly let down by someone whom she trusted. But I am not persuaded that First Direct has acted incorrectly. So I find that it is not liable for the losses that Mrs T has suffered.

Mrs T was persuaded to send her card (which contained a chip) and her PIN to someone who was supposed to be her friend. That person then paid a cheque into her account and has taken advantage of the cheque clearing cycle to make payments against the cheque before it was returned unpaid. First Direct is required to action authorised payment instructions that it receives from an account holder. Because the payments were made using the chip in Mrs T's card and her PIN, First Direct was entitled to assume that the payments were authorised and to action them accordingly.

First Direct applied the standard cheque clearing cycle (which has been described by the adjudicator). Under that cycle a cheque can be drawn against on the fourth day after it was paid in (even though the cheque has not fully cleared at that time). Under the account terms and conditions, First Direct is entitled to treat payments that are made against a cheque

which is later returned unpaid as a request for an overdraft. So I find that First Direct was entitled to treat the payments that were made from Mrs T's account as a request for an overdraft when the cheque was returned unpaid. If it did not do so, the cheque clearing cycle would not work. And although that may have protected Mrs T in these circumstances, the cheque clearing cycle is long established and works to the benefit of most customers.

One of the payments made from Mrs T's account was a different type of payment – it was a “faster payment”. First Direct makes more checks about faster payments than it does for debit card payments. Debit card payments are authorised when the chip and PIN are used. So I find that First Direct acted correctly when it blocked the faster payment but did not make further checks about the other payments.

I sympathise with Mrs T for the difficulties that these events have caused her. Particularly so as she says that they have affected her health. But I find that it would not be fair or reasonable for me to require First Direct to refund the payments to her account or to take any other action in response to her complaint.

### **my final decision**

For these reasons, my decision is that I do not uphold Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs T to accept or reject my decision before 21 December 2015.

Jarrold Hastings  
**ombudsman**