

## The complaint

Mr A complains that HSBC UK Bank Plc trading as first direct (firstdirect) won't refund money he lost in a scam.

## What happened

*What Mr A says:*

Mr A met someone (who I will call 'B') through an online dating website and struck up a relationship with him. He corresponded with B by WhatsApp messages and spoke to him a couple of times on the phone or by video call. B then asked for money – to meet his living expenses and for emergencies he was undergoing. Mr A sent 85 payments to B totalling £5,321.35 between October 2016 and March 2018:

Date	Payment	Amount
October 2016	Phone / online payment	£230.00
October 2016	Phone / online payment	£180.00
October 2016	Phone / online payment	£150.00
December 2016	Phone / online payment	£300.00
December 2016	Phone / online payment	£140.00
February 2017	Phone / online payment	£300.00
February 2017	Phone / online payment	£100.00
February 2017	Phone / online payment	£100.00
February 2017	Phone / online payment	£207.00
February 2017	Phone / online payment	£110.00
February 2017	Phone / online payment	£70.00
February 2017	Phone / online payment	£50.00
February 2017	Phone / online payment	£40
March 2017	Phone / online payment	£70
March 2017	Phone / online payment	£40.00

March 2017	Phone / online payment	£20.00
March 2017	Phone / online payment	£50.00
March 2017	Phone / online payment	£40.00
March 2017	Phone / online payment	£40.00
April 2017	Phone / online payment	£30.00
April 2017	Phone / online payment	£100.00
April 2017	Phone / online payment	£64.00
April 2017	Phone / online payment	£50.00
April 2017	Phone / online payment	£50.00
April 2017	Phone / online payment	£100.00
April 2017	Phone / online payment	£40.00
April 2017	Phone / online payment	£20.00
April 2017	Phone / online payment	£75.00
April 2017	Phone / online payment	£67.00
April 2017	Phone / online payment	£50.00
April 2017	Phone / online payment	£25.00
May 2017	Phone / online payment	£70.00
May 2017	Phone / online payment	£30.00
May 2017	Phone / online payment	£26.00
May 2017	Phone / online payment	£50.00
May 2017	Phone / online payment	£100.00
May 2017	Phone / online payment	£60.00
May 2017	Phone / online payment	£30.00
May 2017	Phone / online payment	£45.00
May 2017	Phone / online payment	£30.00
May 2017	Phone / online payment	£20.00
May 2017	Phone / online payment	£26.00

May 2017	Phone / online payment	£40.00
May 2017	Phone / online payment	£40.00
June 2017	Phone / online payment	£60.00
June 2017	Phone / online payment	£50.00
June 2017	Phone / online payment	£112.00
June 2017	Phone / online payment	£142.45
July 2017	Phone / online payment	£150.00
July 2017	Phone / online payment	£120.00
July 2017	Phone / online payment	£100.00
July 2017	Phone / online payment	£50.00
July 2017	Phone / online payment	£50.00
September 2017	Phone / online payment	£60.00
September 2017	Phone / online payment	£100.00
October 2017	Phone / online payment	£20.00
October 2017	Phone / online payment	£50.00
October 2017	Phone / online payment	£20.00
October 2017	Phone / online payment	£34.00
October 2017	Phone / online payment	£20.00
October 2017	Phone / online payment	£40.00
October 2017	Phone / online payment	£10.00
October 2017	Phone / online payment	£15.00
October 2017	Phone / online payment	£30.00
November 2017	Phone / online payment	£28.00
November 2017	Phone / online payment	£32.00
November 2017	Phone / online payment	£12.00
November 2017	Phone / online payment	£40.00
November 2017	Phone / online payment	£30.00

November 2017	Phone / online payment	£5.00
December 2017	Phone / online payment	£50.00
December 2017	Phone / online payment	£28.00
December 2017	Phone / online payment	£50.00
December 2017	Phone / online payment	£40.00
January 2018	Phone / online payment	£35.00
February 2018	Phone / online payment	£44.00
February 2018	Phone / online payment	£50.00
February 2018	Phone / online payment	£40.00
February 2018	Phone / online payment	£10.00
March 2018	Phone / online payment	£9.00
March 2018	Phone / online payment	£22.00
March 2018	Phone / online payment	£20.00
March 2018	Phone / online payment	£26.00
March 2018	Phone / online payment	£40.00
March 2018	Phone / online payment	£1.90
<b>Total loss</b>		<b>£5,321.34</b>

Mr A believed he was in a genuine relationship with B. He realised he had been scammed when he heard a radio programme in 2023 – which described a romance scam, and he then realised that was had happened to him. He says he couldn't face up to things before then as he was in shock.

Mr A says he was caring for his mother at the time and was vulnerable. He feels ashamed and frightened after what happened to him. He says firstdirect didn't stop any of the payments or ask him any questions when he called to make them. He says firstdirect should've done more to protect him. He says firstdirect should therefore refund some of the payments he made.

*What firstdirect said:*

Firstdirect said they couldn't listen to the calls made by Mr A when he made the phone payments - as these were a long time ago. But because the amounts paid were of a low value, they wouldn't have been flagged for fraud checks. They didn't uphold Mr A's complaint.

### *Our investigation so far:*

Mr A brought his complaint to us. Our investigator didn't uphold it. She said the amounts paid were too low to have expected firstdirect to have stopped them and question Mr A. They were similar to Mr A's normal pattern of spending. Firstdirect had tried to recover the amounts paid, but without success.

Mr A didn't agree. He said the guidance for when firstdirect should intervene meant that it was only richer people, paying larger sums of money away – were protected. He said firstdirect should've intervened and protected him. He asked that an ombudsman look at his complaint, and so it has come to me to make a final decision.

### **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.

The Financial Ombudsman service is bound by the Financial Conduct Authority's rules covering complaints, known as DISP rules (DISP 2.8.2). They state that we can't consider a complaint if it's referred to us more than six years after the event complained about, or if later, three years from the point from which the complainant ought reasonably to have been aware they had cause to complain.

I considered the application of the six-year rule to Mr A's complaint. He complained to firstdirect on 30 August 2023 (I listened to the call). So – applying the six-year rule to the payments, that means we can't consider the 53 payments made before 30 August 2017.

But I've then considered whether Mr A complained within three years from when he became aware, or ought reasonably to have become aware that he had cause to complain. We put this to firstdirect who didn't agree that Mr A had done so and didn't give us permission to look at the 53 payments in question.

But I've considered this – and Mr A told us that he only realised he had been the victim of a romance scam when he heard a similar case being discussed on the radio – in 2023. So – I consider that was when he ought reasonably to have been aware he had cause to complain. And – as he then complained to firstdirect in August 2023 - I consider he did bring his complaint in time, and within the three-year part of the rule.

So, all the payments made can be considered here; and I went on to look at what happened.

I'm sorry to hear that Mr A has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr A didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. 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 firstdirect 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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it came into effect in May 2019 – after the payments in question.

I need to decide whether firstdirect acted fairly and reasonably in its dealings with Mr A when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

*Were the payments unusual?:* I looked at Mr A's bank statements. He used his account for everyday spending and income. And so – the payments he made to the scammer (ranging between £1.90 and £300; with an average of £63) – didn't stand out to firstdirect, and therefore they didn't stop them or question them. If they had been of a much higher value, and were made in rapid succession, then we would've expected firstdirect to have stepped in. But here - that wasn't the case, and I can't reasonably say firstdirect should've stopped the payments, even though I accept they had a significant impact on Mr A personally.

The important point here is - there's a balance to be struck: firstdirect has reasonable obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think firstdirect acted reasonably in processing the payments.

*Recovery:* We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether firstdirect took the necessary steps in contacting the bank that received the funds – in an effort to recover the money. Firstdirect showed us that they contacted the recipient bank, and no funds remained to be repaid. Given that the scam took place between 2016 and 2018, and Mr A complained to firstdirect in August 2023 – this wasn't a surprise. I say that as normally in such scams, funds are removed from the recipient bank immediately. But – I can see that firstdirect did what they could here.

Mr A has lost a lot of money. He's explained why the money was important to him, and the impact his losses have had. I was sorry to learn of his circumstances. He will therefore be disappointed by my decision, but I'm not going to ask firstdirect to do anything here.

**(continued)**

## **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 January 2024.

Martin Lord

**Ombudsman**