

The complaint

Mr C complains that HSBC UK Bank Plc trading as first direct (First Direct) is refusing to refund him the amount he lost as the result of a scam.

Mr C is being represented by a third party. To keep things simple, I will refer to Mr C throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr C was suffering from an illness, and was looking to plan for the future, as such he had been researching cryptocurrency investment online when his wife sent him a message via WhatsApp showing a cryptocurrency investment opportunity.

The investment appeared to be endorsed by a well-known celebrity and showed Mr C would be able to start investing with a small amount. Happy that the investment looked genuine Mr C made the first payment of £250.

Mr C then received a call from the scammer, Kaya FX (X) who explained that she would have to make the trades on Mr C's behalf but that she would be able to make him a profit. Mr C was instructed to download the screen sharing application AnyDesk so that X could help him set up an account on the trading platform.

Mr C complied with X's requests and before long could see he had made a small profit. X encouraged Mr C to invest more stating that if he was to invest £10,000 within two months, he would receive a refund if he started to lose money. Within 14 days Mr C could see that he had yet again made a profit and was keen to continue with the investment.

X continued to request further payments from Mr C and when Mr C refused to make any more payments the funds on his account started to deplete. Mr C tried to make withdrawals several time but was unable to and his account balance eventually fell to £0.

X continued to contact Mr C giving different reasons that he would need to make more payments including that he would have to pay for insurance before he could receive his funds. But when Mr C asked for a written guarantee that his funds would be returned X stopped communicating with him and it was clear Mr C had fallen victim to a scam.

Mr C made the following payments into the scam:

<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
28 February 2018	Gammatech Services	Debit Card	£250
8 August 2018	C Fisicas	International Transfer	£6,000
10 August 2018	C Fisicas	International Transfer	£2,000
24 August 2018	Global Mojave capital	International Transfer	£7,000
28 August 2018	Global Mojave capital	International Transfer	£8,000

26 September 2018	Toot Capital	International Transfer	£7,000
11 October 2018	Iras Star	International Transfer	£5,000

Our Investigator considered Mr C's complaint and thought it should be upheld in part. First Direct disagreed, so this complaint has been passed to me to decide.

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.

It has not been disputed that Mr C has fallen victim to a cruel scam. The evidence provided by both Mr C and First Direct sets out what happened. What is in dispute is whether First Direct should refund the money Mr C lost due to the scam.

Recovering the payments Mr C made

Mr C made payments into the scam via his debit card and the method of international transfer.

When payments are made by card the only recovery option First Direct has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Unfortunately, Mr C made his complaint to First Direct outside of the allowed time to raise a chargeback and therefore First Direct would have been unable to attempt a chargeback for the payments Mr C made into the scam.

When payments are made by transfer First Direct has limited options available to it to recover funds. As Mr C made his complaint about these payments to First Direct a substantial time after he made the scam payments, I think it's highly likely the funds would have since been moved on and no recovery would have been possible by contacting the receiving bank.

With the above in mind, I don't think First Direct had any recovery options available to it for the payments Mr C made.

Should First Direct have reasonably prevented the payments Mr C made?

It has been accepted that Mr C authorised the payments that were made from his account with First Direct, albeit on X's instruction. So, the starting point here is that Mr C is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether First Direct should have been aware of the scam and stepped

in and questioned Mr C about the payments he was making. And if it had questioned Mr C would it have been able to prevent the scam taking place.

The first payment Mr C made into the scam was made via his debit card for £250. This was a relatively small payment that I would not have expected to have triggered First Direct's fraud prevention system prompting it to step in and question Mr C about the payment.

The second payment Mr C made into the scam on 8 August 2018 was an international transfer for £6,000. I don't think this was in line with how Mr C normally operated his account while Mr C had made a previous large payment from his account this was a one off and I think the payment of £6,000 to a new payee via the method of international transfer should have been seen as unusual enough, and of high enough value to trigger First Direct's fraud prevention systems prompting it to step in and question Mr C about the payment.

Had First Direct questioned Mr C I see no reason why Mr C would not have been honest in his responses. I think Mr C would likely have told First Direct that he had come across the investment online endorsed by a well-known celebrity, he would also have given the name of the business and explained he had downloaded a screen sharing application. I think this information would have been enough to bring to light the scam and prevented Mr C incurring any further loss after the initial £250.

First Direct is therefore responsible for Mr C's loss.

Did Mr C contribute to his loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances, I do think it would be fair to reduce compensation on the basis that Mr C should share blame for what happened. It appears Mr C agreed to invest with X without carrying out any research on the company first. A simple online search at the time Mr C was making the payments would have shown several articles describing X as a scam.

Had Mr C carried out a basic search I think it's highly likely he would have realised he was being scammed, and he could have also prevented his loss. So, I think it would be fair to reduce compensation by 50% on the basis that Mr C should share some blame for what happened.

Putting things right

HSBC UK Bank Plc trading as First Direct should refund Mr C the payments he made into the scam from the payment he made on 8 August 2018 onwards. HSBC UK Bank Plc trading as First Direct should deduct 50% from the amount it pays Mr C.

HSBC UK Bank Plc trading as First Direct should apply interest on the payment it makes to Mr C from the date the payment was made until the date of settlement as follows:

- funds that originated from Mr C's current account, include 8% simple interest
- funds that originated from Mr C's savings account, include interest at the rate of the savings account
- funds originating from Mr C's flexi-loan account, include 8% simple interest on 50% of the repayment amount

My final decision

I uphold this complaint and require HSBC UK Bank Plc trading as First Direct to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 January 2024.

Terry Woodham
Ombudsman