

## The complaint

Mr A 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 A is being represented by a third party. To keep things simple, I will refer to Mr A 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 A was approached by a person on Instagram in February 2021. I will call this person X. Mr A knew of X and could see several of his friends followed X's Instagram account.

X explained that he was investing and helping other people do the same. X didn't pressure Mr A into making an investment and Mr A didn't invest straight away. Mr A spoke to X for several months over Instagram and Telegram, he could see that X had thousands of followers and stories that appeared plausible on the Instagram account. All this combined made Mr A feel comfortable that X was legitimate.

X asked Mr A if he wanted to invest. Mr A was added to a Telegram group with over 200 people that appeared to also be investing and X explained that as part of the investment X worked closely with the cryptocurrency exchange Binance and the platform KU Coin.

Mr A tells us he carried out research on the businesses mentioned by X before continuing to invest.

Mr A opened an account with Binance as instructed by X, but after making a few payments via Binance tells us he struggled to process further payments, so opened an account with Kraken as well.

Mr A continued to invest and was also asked for payments so funds could be released from his investment.

In December 2021 X blocked Mr A from all platforms they had been communicating on. Mr A continued attempting to contact X and at one point was able to send a message, but he was quickly blocked yet again. At this point it was clear Mr A had fallen victim to a scam.

Mr A made the following payments into the scam via genuine cryptocurrency exchanges, and received several credits:

<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
26 August 2021	Binance	Debit Card	£3,500.00
27 September 2021	Kraken	Transfer	£10.00
27 September 2021	Kraken	Transfer	£10.00

18 October 2021	Kraken	Transfer	£6.00
18 October 2021	Kraken	Transfer	£2,644.00
19 October 2021	Kraken	Transfer	£165.00
23 October 2021	Kraken	Transfer	£98.18
30 October 2021	Kraken	Transfer	£5,000.00
01 November 2021	Kraken	Transfer	£5,000.00
01 November 2021	Kraken	Transfer	£5,400.00
11 November 2021	Kraken	Transfer	£3,922.00
12 November 2021	Kraken	Transfer	£3,700.00
12 November 2021	Kraken	Transfer	£150.00
18 November 2021	Kraken	Transfer	£5,000.00
18 November 2021	Kraken	Transfer	£5,002.00
19 November 2021	Kraken	Transfer	£4,999.00
22 November 2021	Kraken	Transfer	£1,250.00
30 November 2021	Kraken	Transfer	£5,000.00
1 December 2021	Kraken	Credit	- £162.65
1 December 2021	Kraken	Credit	- £215.20
10 December 2021	Kraken	Transfer	£2,000.00
20 December 2021	Kraken	Credit	- £95.92

Our Investigator considered Mr A's complaint but didn't think it should be upheld. Mr A 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 A has fallen victim to a cruel scam. The evidence provided by both Mr A and First Direct sets out what happened. What is in dispute is whether First Direct should refund the money Mr A lost due to the scam.

#### *Recovering the payments Mr A made*

Mr A made a payment into the scam via his debit card and the rest via the method of 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.

Mr A was dealing with X, which was the person that instigated the scam. But Mr A didn't make the debit card payment to X directly, he paid a separate cryptocurrency exchange (Binance). This is important because First Direct would only have been able to process chargeback claims against the merchant he paid (Binance), not another party (such as X).

The service provided by Binance would have been to convert or facilitate conversion of Mr A's payment into cryptocurrency. Therefore, Binance provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr A paid.

In any event, Mr A also made his complaint to First Direct outside of the allowed timescale to raise a chargeback.

The remaining payments Mr A made into the scam were made via transfer. When payments are made by the method of transfer First Direct has limited options available to it to seek recovery.

First Direct could contact the receiving bank for the payments Mr A made, but again as the payments made from Mr A's account with First Direct were sent to another account in his own name, and he had already forwarded these funds from Kraken to X this would not have been successful.

Considering the above, I don't think First Direct had any reasonable options available to it to seek recovery of the payments Mr A made as part of the scam.

*Should First Direct have reasonably prevented the payments Mr A made?*

It has been accepted that Mr A 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 A 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 into question Mr A about the payments he was making. And if it had questioned Mr A, would it have been able to prevent the scam taking place.

The first payments Mr A made into the scam were for relatively low amounts that I don't think would reasonably trigger First Direct's fraud prevention systems. However, Mr A started to make larger payments from 30 October 2021 when he made a transfer for £5,000. Considering the size of this payment I think it should have triggered First Direct's fraud prevention systems prompting it to step in. But even if First Direct had stepped in at this stage I don't think it would have made a difference.

I say this because Mr A also sent payments from another of his accounts held at another bank. On the 1 October 2021 one of these payments was stopped and a conversation between Mr A and the bank took place. I am satisfied by the timing of this payment and the conversation that took place that this payment was also attempted in relation to the scam.

I have listened to a recording of this call. The bank explains that the payment Mr A was attempting to make was stopped as it matches a known fraud trend. Mr A explains that he has carried out due diligence on the business he is making payments with and is happy it is FCA approved.

Mr A is warned that investment opportunities that are advertised or offered through social media and may look genuine can often be scams. Mr A again confirmed he had carried out his own checks including those with the FCA. Mr A also confirms that he had previously fallen victim to a scam in 2016 so was more vigilant and had carried out appropriate research.

Mr A also said he had made one payment in relation to the investment at this stage, but this wasn't correct he had made several payments from his First Direct account.

While I think the bank could have asked further questions it's clear from the call that Mr A was happy the investment was genuine, so even if First Direct had intervened and prompted Mr A to do further research before making the payments from his First Direct account I think he would have continued to make the payments.

So, I don't think First Direct missed an opportunity to prevent the scam and it is not responsible for Mr A's loss.

### **My final decision**

I don't 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 20 February 2024.

Terry Woodham  
**Ombudsman**