

The complaint

Ms V complains that HSBC UK Bank Plc (trading as “First direct”) won’t refund £10,500 she says she lost to an investment scam.

The details of this complaint are well known to both parties, so I won’t repeat everything again here. Instead, I will focus on giving the reasons for my 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons:

- It isn’t in dispute that Ms V authorised the disputed payments she made to her Binance wallet using her First Direct debit card (where her funds were subsequently transferred on to the scammer). The payments were requested by her using her legitimate security credentials provided by First Direct, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.
- However, I’ve considered whether First Direct should have done more to prevent Ms V from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.
- It isn’t in dispute that some of the disputed payment activity was considered unusual, such as the second payment she made to Binance on 19 April 2022, which was blocked pending further enquiry. On this occasion that Ms V spoke to First Direct, she was asked questions such as whether she had been pushed or pressured into making the payment, and whether she had been contacted out of the blue, to which she said she had not.
- I note that Ms V had made payments to cryptocurrency platforms prior to making the disputed payments, such as paying £3,000 to Kraken on 7 and 8 April 2022. First Direct spoke to Ms V about these payments, where she confirmed that she had approached Kraken herself for an investment, and that nobody else had contacted her. Given Ms V’s previous payments to Kraken, I don’t think First Direct ought reasonably to have had and significant concerns when she started making payments to Binance as another crypto platform in the same month. So, I think it’s line of questioning was proportionate to the potential risk when it spoke to Ms V about the payments she was making to Binance.
- Even I were to accept that First Direct should have gone further with its intervention and warned Ms V or told her to carry out further research, I’m not persuaded this would have ultimately prevented her loss in any event. I say this because Ms V has said she eventually began to doubt the legitimacy of the scam broker when her friend showed her negative reviews from Trustpilot saying they were fraudulent. However, Ms V said she

had developed a trusting relationship with the broker, who explained to her that the reviews were not genuine, so she continued to follow their advice. So, given a warning from Ms V's friend failed to reveal the scam, it seems unlikely that any further questioning or warning from First Direct would have made any difference in these circumstances.

- I appreciate Ms V says she was vulnerable at the time, as she was suffering with her mental health. I'm sorry to hear about the difficult time Ms V has gone through. But I can't see that First Direct had been given prior notice of any vulnerabilities, or that there was any suggestion that she might have lacked capacity to make her own financial decisions at the time. As such, it wouldn't have been reasonable for First Direct to refuse a payment mandate given by Ms V.

I appreciate this will likely come as a disappointment to Ms V, and I'm sorry to hear she has been the victim of a cruel scam. However, I'm not persuaded that First Direct can fairly or reasonably be held liable for her loss in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms V to accept or reject my decision before 19 October 2023.

Jack Ferris
Ombudsman