

The complaint

Mr B complains that HSBC UK Bank plc (trading as First Direct) didn't do enough to protect him when he was the victim of a crypto investment scam.

Mr B is being supported by a representative, but for ease, I'll refer to Mr B throughout this decision.

What happened

The background to this complaint is well known to both parties, and so I'll only refer to some key events here.

In September 2022 Mr B said he made an online enquiry with a company (who I'll refer to as 'P') about investing in crypto. He said he'd seen endorsements on trading in Bitcoin from Elon Musk – and videos from investors talking about the profits they'd made.

Mr B was contacted by who he was told was a trader (the scammer) working for 'P'. He said he found the scammer '*professional*' and '*articulate*'. And the presence of online reviews and news articles about 'P' reassured him of its legitimacy.

With the help from the scammer, Mr B downloaded several apps on his mobile phone. This included remote access software, an account with a legitimate crypto exchange (which I'll refer to as 'C'), and 'P's trading app.

On 3 September 2022 Mr B transferred £250 from another bank to 'P's trading platform, via 'C', and he said the funds were immediately visible in his trading account.

Over the next couple of weeks, Mr B communicated with the scammer about investment opportunities. He said he expressed some concern at the initial amount the scammer suggested he invest (£8,000) – and so a reduced amount of £2,000 was agreed. Mr B said he was also able to withdraw £100 from his trading account.

Mr B said the scammer suggested he open a new bank account to facilitate the trading. He opened an account with First Direct on 20 September 2022.

On 6 October 2022 Mr B set up a new payee with the reference of '*crypto*' to make a payment of £2,000. He received a fraud warning, and the payment was blocked. First Direct spoke to Mr B on several occasions about this payment. The payment wasn't processed because of what appears to have been an administrative error.

Between 13 October and 9 December 2022 – Mr B made the following payments from his First Direct account to 'C' totalling £67,960:

Date	payee	Amount
13/10/22	crypto	£2,001
26/10/22	crypto	£3,000
28/10/22	crypto	£3,001
7/11/22	crypto	£14,003

11/11/22	crypto	£10,001
17/11/22	crypto	£8,501
21/11/22	crypto	£9,301
24/11/22	crypto	£10,851
9/12/22	crypto	£7,301

First Direct issued a fraud warning in relation to the 13 October 2022 £2,001 payment and spoke again with Mr B. This payment was successfully processed. First Direct flagged no other payments as suspicious.

Around the middle of November 2022 Mr B decided he wanted to withdraw his money. He was told by the scammer that his account had been frozen due to 'market conditions' and he needed to pay an insurance to protect his profits – as well as a sum to cover 'commission'. Mr B was also advised by the scammer that he needed to make a further payment to comply with anti-money laundering regulations.

Mr B made the requested payments and the scammer told him the funds would be paid into his account with 'C'. But after further communication, Mr B was told there'd been a problem and he'd need to pay a further amount to recover his funds. Mr B said he had no option to do as the scammer advised, and having taken out a loan, paid a further £7,301.

On 15 December 2022 Mr B telephoned First Direct to ask its advice about the payments he was being asked to make to facilitate the withdrawal. First Direct said it was concerned Mr B was the victim of a scam and put a block on his online banking. First Direct spoke to Mr B again on 19 December 2022. It said as he'd transferred money to an account in his own name (his account with 'C'), there was no claim rights under the CRM code.

By February 2023 Mr B lost contact with the scammer and was unable to access his account. At this point he realised he'd been the victim of a scam. And in March 2023 he complained to First Direct, via his representatives. He said First Direct should've done more to protect him.

First Direct believed it had provided effective warnings to Mr B and yet he'd proceeded with the payments. It therefore didn't think it was responsible for Mr B's loss.

Unhappy with First Direct's response, Mr B referred his complaint to the Financial Ombudsman. He maintained First Direct hadn't done enough to protect him and should've asked more probing questions when it spoke to him. Mr B said he would've taken First Direct's advice and said *'if I had any inclination that this was a scam I would not have gone through with the payments'*. Mr B wanted the funds returned, plus 8% interest, as well as £500 for the distress and inconvenience caused.

One of our Investigators considered the complaint but didn't uphold it. She thought First Direct had done enough to protect Mr B.

Mr B didn't agree and asked for an Ombudsman to issue a final decision. He accepted that he hadn't been completely transparent when questioned by First Direct about the payments – but contended that if First Direct had asked more probing questions relating to the specifics of crypto investment scams – his loss could've been prevented. Mr B added that he had been *'upfront and honest'* with First Direct when they spoke on 15 December 2022, and it asked him more probing questions.

Mr B also questioned why First Direct didn't intervene with the £14,003 payment. He said this was an unusually high amount and should've been of concern to First Direct – and more probing questions at this point would've uncovered the scam. On that basis, Mr B wanted us to consider a refund of payments made from the £14,003 payment onwards, less 50% to allow for shared liability.

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've decided not to uphold this complaint, for largely the same reasons as our Investigator. I know this is not the answer Mr B was hoping for and so this will come as a disappointment. I'm really sorry to hear he's been the victim of a scam and has lost money as a result. I can understand why he'd want to do all he can to recover the money he lost. But I need to decide whether First Direct can fairly and reasonably be held responsible for Mr B's loss. Overall, I've decided that it can't be. I'll explain why.

I accept the transactions Mr B made were authorised payments, even though he was the victim of a sophisticated crypto investment scam. So, although he didn't intend the money to go to the scammers, under the Payment Services Regulations 2017 and the terms and conditions of his account, Mr B is presumed liable for the loss in the first instance.

However, taking into account what I consider to have been good industry practice at the time, I consider First Direct 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 financial institutions are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.

So, taking all of this into account, I need to decide if First Direct acted fairly and reasonably in its dealings with Mr B when he made the payments, specifically whether it should've done more than it did before processing the payments – and if it had, would that have made a difference.

Mr B had several interactions with First Direct – as well as receiving a fraud warning. His first attempted payment to 'C' on 6 October 2022 generated the following:

'Fraudsters are contacting people offering investments that sound genuine. Take extra care, especially if you have received a call after searching online for investments or filling in an online form'.

And I can see from First Direct's records that this warning was generated again when Mr B attempted the 13 October 2022 payment.

The attempted payments on 6 and 13 October 2022 prompted several telephone calls between Mr B and First Direct. Where there is interaction between a bank and its customer in relation to a payment, we'd expect the bank to take this opportunity to find out more about the nature of that payment. And so, I've thought carefully about whether

First Direct asked the right questions during its interactions with Mr B to fully understand the nature of the transactions he was trying to make. And I do think it did enough.

During these conversations, First Direct enquired how the investment had come about to which Mr B said it was via a friend. He mentioned 'C' but said no third party was involved. Mr B maintained his position throughout the telephone calls, as well as being clear with First Direct that he was aware of the risks involved and had done his own research. And that he had read and understood the fraud warnings First Direct had provided. Mr B said only he had access to his account with 'C' and this wasn't the first time he'd used 'C' – confirming he'd made a payment from another bank account.

Firstly, from listening to the telephone calls, Mr B was engaged in the conversation with First Direct and was confident in his responses. So, I don't think First Direct had any obvious reason to doubt what Mr B was saying.

Looking at First Direct's line of questioning, it asked Mr B, on several occasions, if there was any third-party involvement or if he'd been asked by anyone to send money to 'C'. Mr B might've interpreted this question differently when he responded that he was investing for himself and wanted to make some money for his retirement – but I think First Direct's questions were clearly trying to ascertain if there was a third party involved here – a clear hallmark of a crypto scam. This provided Mr B with the opportunity of explaining he'd been contacted by someone from 'P' – with whom he'd been actively communicating with since early September 2022. And that trades were being done on his behalf via an account set up by 'P'. Yet Mr B didn't divulge any of this information to First Direct – despite this exact scenario being outlined in the written fraud warnings Mr B said he received and understood.

Mr B accepts he wasn't completely honest with First Direct, but has said it should've probed more deeply, asking more crypto investment scam specific questions, and not just relied on what he said. But I think First Direct gave Mr B ample opportunity to divulge the background to the investment. And it specifically asked him if he'd been coached into what to say to mislead and ensure the payments went through – which Mr B said he hadn't. So, I don't think First Direct would've had an obvious reason to disbelieve what Mr B was saying. Nor do I think Mr B provided information that would've prompted a different line of questioning from First Direct.

I agree that at times during the telephone calls First Direct spoke in more general terms about the risks related to crypto investment scams – but some of that did apply to Mr B. In particular, First Direct made it clear to Mr B that they'd seen lots of scams around crypto investments and had seen *'lots of complaints about scams linked to 'C'*. It explained how scam websites and trading platforms can look genuine – and that he should be wary of third parties asking him to transfer money. But again, despite First Direct's clear fraud warnings to Mr B about scammers targeting people after completing online forms – as he had done – Mr B *still* didn't divulge the origin of the investment and who was advising him.

Much of First Direct's questioning does focus on 'C'. Ultimately, 'C' is a legitimate company, and First Direct, as the experts, should be aware that scammers often use legitimate companies as part of the scam to make the investment appear genuine and harder to detect.

But I think First Direct made reasonably sufficient attempts whilst questioning Mr B to ascertain if there was a third party involved. But he didn't tell First Direct that – instead saying he'd known about 'C' for a while having found information about it online and from other people he knew - and had used them before to make payments from another bank

account. I can't reasonably say First Direct was at fault here. It asked Mr B direct questions designed to further tease out if there was any third-party behind the investment. But Mr B gave no indication that was the case and provided answers which reassured First Direct he was the only person involved, that he knew what he was doing, and was prepared to take the risk.

I've thought about whether any more probing by First Direct or its intervention in other payments would've made a difference. But I don't think it would've done.

I can tell from the conversations between Mr B and First Direct that he was completely caught up in the scam. As I've said above, he spoke with confidence about what he was doing and was very keen for the payments to be processed without further delay – which partly, I accept, was likely influenced by the amount of time he'd spent speaking to First Direct and the repeated questions. But I'm also mindful that this prolonged interaction gave Mr B *more* time to reflect on the warnings First Direct was giving – and the accuracy and significance of the answers he was providing.

I'm also mindful that Mr B's initial contact with 'P' was because he'd enquired about investing in crypto. He wasn't contacted out of the blue or pressured into investing – it had been his choice. He was also engaged with 'P' about the initial investment, and the amount he was comfortable investing, for a month prior to any payments being made.

This all suggests to me an element of choice in Mr B's actions and an appetite to take a risk. And I must remember that First Direct was limited in providing effective warnings to Mr B because of his lack of disclosure. But despite the warnings it did give being relevant to the situation Mr B was in, he proceeded with the payments, nonetheless. All of this, I think, increases the likelihood of Mr B continuing with the payments regardless of *any* warnings First Direct gave.

Mr B was also able to access his account with 'C' and could see his first payment appear in his account and was able to take out £100. He was also able to access his trading account with 'P' and see how his investment was performing after each payment was made. So, to his mind, there was nothing obvious to be concerned about.

I've also listened to the telephone call Mr B had with First Direct on 15 December 2022. I accept Mr B's point that he was '*upfront and honest*' with First Direct during this call – but I would suggest that wasn't because First Direct asked more probing questions than in previous telephone calls. Rather, it was because Mr B was clearly concerned about getting access to his money – and was seeking reassurance from First Direct. And by offering up information about how the scam came about and the role of 'P' – this immediately enabled First Direct to probe more deeply and take reasonable steps to protect Mr B. This also demonstrated what First Direct would likely have done if Mr B *had* provided accurate answers to questions asked by First Direct in relation to the first two payments.

Considering all these points, I'm satisfied First Direct did enough to reasonably ascertain whether Mr B was at risk of financial harm from fraud – and, based on the information Mr B disclosed, I'm satisfied First Direct gave reasonable appropriate warnings and advice to Mr B. And even if it had probed or questioned Mr B further on a later transaction(s), there's nothing to suggest he would've answered any differently. It was only at the point in mid-December 2022 when the scammer was asking Mr B for money to cover an international payment fee that he had any concerns at all – and even at that point – despite clear indications from First Direct that this was a scam – Mr B seemed reluctant to accept that this was possible. He was still able to access and see his accounts with 'P' and 'C' at this time, and it wasn't until February 2023, when all contact was lost, that Mr B accepted the investment was a scam.

Taking everything into account, I don't disagree that Mr B has been the victim of a sophisticated crypto investment scam. But I think First Direct did enough to try and protect him. And I think any reasonable further action from First Direct is unlikely to have made a difference. So, I don't think it's fair or reasonable to hold First Direct accountable for Mr B's loss.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision **before 22 November 2023**.

Anna Jackson
Ombudsman