

The complaint

Ms S complains that HSBC UK Bank Plc trading as first direct (first direct) wouldn't refund money she lost in a scam.

What happened

What Ms S says:

Ms S is represented by a third-party firm of solicitors, but I will refer to Ms S as the complainant.

Ms S' sister was going through a divorce and invested some funds to help her pay legal fees. In June 2020, Ms S' sister invested money into crypto investments with Bright Finance, who'd advertised on TV and claimed to be reliable and trusted. Her initial investment was £3,270. Ms S' sister was told she had funds valued at £168,990. But when she wanted to withdraw money from the platform, she couldn't.

Ms S was very concerned about her sister's well-being – she was feeling suicidal and depressed, especially in the light of her divorce. Her sister needed money to pay for her divorce and for housing. Ms S then contacted the scammers (Bright Finance) to try to resolve matters for her sister. She was contacted by persons associated with the scammer, and they seemed genuine and knowledgeable. She checked the websites of Bright Finance and Luno, and they appeared genuine and professional. She wanted to withdraw her sister's funds. To do this, she was told she had to pay commission and this she did - £5,731.77. After that, she made a succession of payments, with the reasons given as: proof of liquidity; payment of tax and fees; and synchronisation of her personal wallet in Luno.

No funds were received, other than a payment of £780.27. Ms S then contacted the real Luno company and was told she had been scammed.

Ms S says first direct should've intervened in the payments and warned her she could be the victim of a scam, but didn't. Each payment was made without any questions being asked. She said first direct should be responsible for her losses and refund the money.

The payments were:

Date	Payee	Amount	Method	Currency
3 August 2020	A	£5,731.77	International payment	GBP
6 August 2020	A	£8,800	International payment	Euro

12 August 2020	B	£24,210.87 (refunded 14 August 2020)	International payment	GBP
17 August 2020	B	£24,210.87	International payment	Euro
21 August 2020	B	£26,720.70	International payment	Euro
4 September 2020	C	£16,899.00	Online payment – mobile phone	GBP
7 September 2020	C	£82,000.00	International payment – phone instruction	GBP
8 September 2020	Credit	(£780.27)		
9 September 2020	D	£26,000.00 (refunded 16 September 2020)	International payment	GBP
17 September 2020	D	£26,000.00	International payment	Euro
13 October 2020	C	£30,000.00	International payment	GBP
3 November 2020	C	£10,520.59	International payment	GBP
Total loss		£230,102.66		

What first direct say:

Ms S complained to first direct in July 2022. First direct said some of the payments were by debit card and couldn't be refunded (this was a mistake – as they were all international payments either online or by phone banking). And the other payments were to an overseas bank and did not fall under the Contingent Reimbursement Model Code (CRM Code). They didn't refund any money.

Ms S brought her complaint to us. Our investigator said first direct should've intervened in the first payment of £5,731.77 and asked Ms S more questions than they did. It was a telephone payment, so first direct had the opportunity to do so. Had first direct asked more questions at that time, the scam would've been discovered and unravelled. And so after that, Ms S wouldn't have made the further payments.

Our investigator said Ms S should bear 50% of her losses - as she didn't take reasonable measures to avoid them. She was paying out more than £200,000 to withdraw her sister's money – which was said to be worth £168,990, and this should've been questioned by Ms S. She should've carried out more due diligence on the firms involved. He could see Bright Finance wasn't registered as an authorised or regulated firm; and Trust Pilot also carried several warnings about the firm at the time, saying other investors had been scammed.

On recovery, he said first direct did what they could, but as the payments were to overseas banks and beneficiaries, nothing could be recovered.

Ms S (through her advisors) didn't agree. She said:

- First direct should easily have seen that as the first payment related to bitcoin, it had the characteristics of a scam. Ms S could then have been warned about the possibility of a scam. As it was, she went on to make the further payments and she lost a substantial amount of money – the entire contents of her account. Ms S said first direct should bear 75% of her losses.

First direct also didn't agree. They said:

- It was unclear what Ms S stood to gain from the payments, other than helping her sister out. This had been confirmed in Ms S' call to first direct on 11 July 2022.
- Effectively, Ms S was loaning the money to her sister, so it wasn't clear how Ms S lost any money.
- They asked if correspondence between Ms S and her sister had been evidenced regarding the payments.
- No party had seen any evidence of her sister's investments. So for Ms S to attempt payments of over £270,000 – gave rise to the plausibility of the scam.
- Why were the payments made to four different payees, one of which was a crypto currency exchange and three were foreign companies?
- Ms S behaved very carelessly in making the payments and should bear 100% of her losses.

Our investigator pushed back to both Ms S and first direct and didn't change his view. So – Ms S' complaint has come to me.

I made a provisional decision which said:

I'm sorry to hear that Ms S has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although Ms S didn't intend for the money to go to a scammer, she 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 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 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 applies to faster payments made to a UK beneficiary – and in this case, the payments were made an overseas account.

I need to decide whether first direct acted fairly and reasonably in its dealings with Ms S when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

I looked at Ms S' account – and whether it's reasonable to have expected first direct to have intervened in the payments.

Ms S used her account for everyday payments and receipt of her salary. There were some previous large payments such as:

- £4,400 – March 2020
- £1,150 – March 2020
- £1,350 – July 2020
- £4,500 – August 2020 (after the first payment was made to the scammers)

I can see that Ms S held balances of over £200,000 in her first direct account, and her account was almost drained of funds after the series of payments were made.

First payment - £5,731.77 – 3 August 2020:

This was to a new payee and was to an overseas bank/ beneficiary. So – while the amount wasn't out of line with some of Ms S' normal account activity, I think first direct should've asked Ms S more questions than they did. I listened to the call. The call handler asked where Ms S got the payee details from. Ms S said, *"email and phone – I've been talking to them all day"*. The call handler asked why she was making the payment. Ms S replied *"a financial thing they're doing, finishing off bitcoin stuff...cashing out..."*

Ms S confirmed it was a payment she was expecting to make, and that she was happy to proceed.

Ms S argues that when she mentioned 'bitcoin', first direct should've then intervened strongly and asked her more questions and warned her about a possible scam. Although I agree with that – I also need to consider whether Ms S would've gone ahead anyway – and I think she would have. I say that – as she was very confident on the call about the payment and gave the impression it was a normal thing for her to do. And, given how strongly she felt she needed to help her sister, I'm persuaded that she would've gone ahead and made the payment anyway. And here, I'm mindful that she thought that at that stage, she needed to pay £5,731.77 to release her sister's investment of £168,990 – so I think it's more likely than not that she would've gone ahead.

So – I don't agree that the first payment should've been stopped, so I looked at the subsequent payments.

Payments - 6 August 2020 (£8,800); 12 August 2020 (£24,210.87) (refunded 14 August 2020); 17 August 2020 (£24,210.87) and 21 August 2020 (£26,720.70):

First direct confirmed they didn't intervene in these payments. I consider they should have – they were out of character for Ms S, were high value international payments, three of which were in a currency, and three were to a different payee to the first one. And one payment was refunded and then made again – which looked odd. Ms S had now made, or attempted to make, payments totalling £89,671 and in a three-week period. There was now a pattern of high value payments which should've caused a concern to first direct.

I think it's therefore reasonable to have expected first direct to intervene and ask open, probing questions, but they didn't. If they had, they would've found out that these were payments in respect of a bitcoin investment – which was a typical of a scam. Ms S would've outlined how the contact had been made with the scammers, and how she had been instructed by the scammers, and what the payments were for. I saw no indication that Ms S had been coached by the scammers to answer questions in a certain way, so it's more likely than not the scam would've then been uncovered.

Looking at the point at which first direct should've reasonably intervened – I think it's fair to say this should've been at the point of the payment of £8,800 – as by then there had been two payments to a new international payee, in euros totalling £14,531. And so – I think it's reasonable that first direct should refund the money paid to the scammers from that point onwards.

But for completeness, I've gone on to consider what happened with the other payments.

Payment – 4 September 2020 - £16,899:

First direct did intervene and called Ms S. They asked the purpose of the payment – and Ms S said, *"it's payment for a business transaction I'm doing"*. The call handler asked if anyone asked Ms S to make the payment and she said, *"by myself"*.

Payment – 7 September 2020 - £82,000:

First direct called Ms S. She said she was *"doing a business deal"* and *"I've paid them before"*. The call handler accepted this and released the payment.

Payment – 13 October 2020 - £30,000:

First direct intervened and asked Ms S about the purpose of the payment. Ms S said it was *"financial business, getting money later, shares and stuff"*. The call handler said that if it turned out to be a scam, no refund would be made.

So on these three payments – especially in the light of the other payments that had been made - I think it's reasonable that first direct should've gone much further and asked more probing questions than they did. I also noted that a payment of £30,000 was received into Ms S' account only four days before the payment of the same amount – which should've caused first direct to ask more questions.

Payments - 9 September 2020 (£26,000 – refunded); 17 September 2020 (£26,000); 3 November 2020 (£10,520.59)

First direct told us they didn't intervene in these. I think it's reasonable to say they should've done so – they were high value payments to overseas payees, some in currency, and followed on from the series of the other payments made. And one was preceded by a like

refund.

Therefore, in the first instance, I consider first direct should be liable for all of the payments less the amount of the first one (£5,731.77). That's a total of £224,370.89.

Contributory Negligence:

But that's not the end of the story here. I considered whether Ms S could've done more to protect herself from the scam, and I think in this case – she could have done so. And there are several pieces of missing or contradictory evidence which also causes me to reduce the proposed refund. I think Ms S should only receive a refund of 50% of £224,370.89. I say this because:

- We asked Ms S for evidence of her sister's investments – and we weren't provided with anything.
- We asked to see Ms S' sister's bank statements to show us the investments she made but weren't provided with these.
- The justification for Ms S sending money to the scammers was to get back the money which her sister had invested – and couldn't get repaid. It would've been a reasonable thing for Ms S to consider here was something suspicious about what had happened to her sister and questioned the payments she was being asked to make. By not doing so, she put herself at risk.
- Ms S told us that while her sister's investment was worth £168,990, she had invested cash of only £3,270 in June 2020. So – for Ms S to pay more than £230,000 to get back £3,270 – seems to me to be an unwise thing to do.
- Even if Ms S' sister's investments were worth £168,990, then for Ms S to pay more than £230,000 – much more than its value - doesn't seem a sensible thing to have done.
- We asked Ms S for correspondence between herself and her sister but weren't provided with anything.
- We saw WhatsApp chats between Ms S and the scammer dated from early September 2020. We asked to see some earlier chats but were told these aren't available as they were on Ms S' old phone and had been lost. So – I couldn't see what took place between Ms S and the scammer leading up to the first payments.
- Ms S was told she would get some money back from the scammer, but nothing was paid - but she continued to send money to them. I consider that a reasonable person shouldn't have done that.
- There were refunds of two of the payments – which Ms S should've asked questions about. But – she went ahead and repeated the payments again.
- The payments were made to four different payees – which Ms S should've asked questions about.
- As our investigator said, there were warnings online about Bright Finance – and that it was an organisation which was subject to scams. And the Financial Conduct Authority's (FCA) website showed it wasn't regulated or authorised. So - even though Ms S says she carried out due diligence, I think it's reasonable that she should've

seen this information, and not made the investments, or at least been more careful.

For all these reasons, I think it's fair and reasonable that Ms S should bear 50% of the losses, and first direct bear 50%.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether first direct took the necessary steps in contacting the banks that received the funds – in an effort to recover the lost funds. We asked first direct about this – and they contacted the overseas banks in July 2022 (when Ms S contacted first direct). But by then, no funds were left to recover. I think it's very unlikely that any money would've still been available to be repaid after so long in any case. And it is rare for a firm to achieve any recovery from an overseas bank – as they have fewer obligations to do so.

My provisional decision is that first direct should refund 50% of £224,370.89, plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Responses to the provisional decision:

Ms S, through her advisers, accepted the findings, but first direct didn't. They said:

- It remained unclear that the loss was actually Ms S' – that she made the payments on behalf of her sister believing that her sister would repay her. First direct said they hadn't seen enough of the mechanics of the scam and payments to be sure.
- The credit to Ms S' account for £30,000 on 9 October 2020 (and then paid to the scammer on 13 October 2020) was a transfer from Ms S' mother – so the loss wasn't Ms S' loss, but that of her mother.
- If I accepted that the first payment of £5,731.77 would've gone ahead even if first direct had intervened, why would the next payment of £8,800 not also have gone ahead – given that Ms S stood to gain £170,000 if the payments continued. First direct said that the second payment would likely have also gone ahead.
- Ms S seemed more and more determined to make the payments and actively misled first direct on some of the others.
- Given that that complaint wasn't made until July 2022, 18 months after the payments stopped, first direct don't feel Ms S should benefit from interest of 8% per annum on the payments refunded.

I now need to consider these points and 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 crux of what first direct have said (and have said previously) is that they're uncertain about whether Ms S lost the money, and whether she was scammed – or whether she was paying money to and supporting her sister. I thought about this when I issued the provisional decision, but also asked some further questions of Ms S (through her advisors).

- *In summary*, we are satisfied that Ms S was the victim of the scam, and it was Ms S that lost her money:
- We've seen the statements from the scammers, which show the payments going to them and the bitcoins being 'purchased' for Ms S.
- We've seen WhatsApp chats between the scammers and Ms S up to when she realised she'd been scammed – these show how she was taken in and paid the money to the scammers.
- We've seen Ms S' sister's bank account statements – which shows she made her payments to the scammers in July 2020 - before Ms S started to make payments from her own account.
- *Credit of £30,000 to Ms S' account* – she has told us this was from her savings account. I noted her statement indicated it may have come from her mother or sister. But – whatever the source of funds, and whether Ms S needs to pay it back to her relatives or not – we are satisfied she paid that money to the scammer (on 13 October 2020), and therefore it was Ms S that's lost the money.
- *Would the payment of £8,800 been made or not* – while I appreciate the argument that first direct have made, of course we will never know – as they didn't intervene. But my judgment in the provisional decision was that a pattern was established by that time - and the second payment followed only three days after the first one; to an international payee and in euros. I think that was sufficiently out of character as to warrant intervention.
- *Did Ms S mislead first direct*: first direct were the experts here and were aware of the signs of scam payments. Whether or not Ms S misled them, or was evasive, the calls I listened to (for the later payments where first direct did intervene) were brief and first direct didn't question what Ms S said or ask for any further information. For example, we would've expected questions such as:
 - Why are you making the payment?
 - Who to?
 - For what purpose?
 - How did you hear about the investment?
 - How were you contacted about it?
 - Where did the money come from that you're investing?
 - What do you know about bitcoin investing?
 - Have you made bitcoin investments before?
 - How were you given the bank account details where the money was to be paid to?

There weren't any of these reasonable and necessary open questions asked, as should've been the case. Whether such questions would've been asked for the earlier payments (starting on 6 August 2020 through to 21 August 2020) – we will never know, as first direct didn't intervene.

Interest of 8% per annum: First direct are aware that this service awards 8% simple interest per year to reflect the cost to a consumer of being deprived of money. Interest should be payable from the date of each payment because this is the point at which the loss should have been prevented.

So, having considered first direct's arguments, my final decision is unchanged from the

provisional decision.

My final decision

I uphold this complaint. HSBC UK Bank Plc trading as first direct must:

- Refund £112,185.44 plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 24 November 2023.

Martin Lord
Ombudsman