

The complaint

Mr T complains that HSBC UK Bank Plc trading as first direct won't refund money he lost when he fell victim to an investment scam.

What happened

The details of this complaint are well known to both parties and have also been previously set out by the investigator in their view. So, I'll focus on giving my reasons for my decision.

The complaint concerns four payments totalling £12,500 which were made from Mr T's first direct account between February and December 2020 in connection to an investment opportunity that turned out to be a scam. These were cross-border transactions, with the first one going through an account in the UK. Mr T was also able to make three 'withdrawals' totalling £5,000 during that time. Therefore, the loss being claimed for is £7,500.

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:

- Under regulations and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There's no dispute that Mr T made the payments using his security credentials, and so they are authorised.
- The Lending Standards Board's Contingent Reimbursement Model (the CRM Code), which requires signatories such as first direct to reimburse customers who are victims of scams like this one in all but a limited number of circumstances, doesn't apply here. This is because international payments aren't covered by the Code. Although the initial payment of £500 went to a UK based account first, I understand the account belonged to an international payment service provider who facilitated the transfer to an overseas account. Under the circumstances, the payment isn't covered by the Code.
- While I find the CRM Code doesn't apply here, that code is not the full extent of the relevant obligations that could apply in cases such as this. In accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.

- I've looked at the operation of Mr T's account. I don't consider the disputed transaction amounts – which ranged from £500 to £5,000 – were particularly unusual or suspicious such that I think first direct ought to have challenged the payments. Just in the month prior to the first disputed transaction, Mr T made payments for £30,000.00 and £95,572.85 from his first direct account. Therefore, I don't think any of the disputed transaction amounts ought to have flagged as unusual.
- Mr T says the disputed transactions went to 'non-standard foreign accounts', so first direct ought to have picked them up. I understand the point he's trying to make. But I don't consider that an international payment in and of itself ought to flag as suspicious. Mr T's account offers the facility to make international payments. So, it isn't unusual to expect the customer to make international payments. Also, the payments were spread across several months. So, it's not the case that there was a sudden increase in international payments in a short period of time, which I *might* have considered as being unusual for Mr T's account.
- I've also thought about the recovery of funds once first direct became aware of the situation. Banks are expected to contact the beneficiary bank and attempt to recall the payment as soon as they're notified of a scam. I can see first direct took that action when the matter was reported to it. Unfortunately, no funds remained in the beneficiary accounts. This isn't surprising given the length of time that had passed between when the payments were made and when first direct was notified.

In summary, despite my natural sympathy for the situation in which Mr T finds himself, I don't find that first direct has acted unfairly or unreasonably. So, I won't be making an award against it.

My final decision

For the reasons given, 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 T to accept or reject my decision before 11 November 2023.

Gagandeep Singh
Ombudsman