

The complaint

Mr H complains that CB Payments Ltd won't refund money he lost as a result of a scam.

What happened

In November 2020 Mr H fell victim to an investment scam and was persuaded to send cryptocurrency to his investment. Between January 2021 and September 2021, he deposited money into his electronic money account with CB Payments. He then used these funds to purchase cryptocurrency from a separate business – Coinbase Europe. He then sent this cryptocurrency from his Coinbase Europe account to the scammer. Overall, he lost just under £110,000.

Mr H later realised he'd fallen victim to a scam and complained to Coinbase. It responded on behalf of both CB Payments and Coinbase Europe to say they did not own or control the recipient of the cryptocurrency and had no information on that. They said transactions completed using cryptocurrency were irreversible. They felt as Mr H didn't deny authorising the transactions, they couldn't be held responsible for his loss.

Unhappy with this answer Mr H referred the complaint to our service – saying that CB Payments should have noticed how unusual these payments were and picked up on them under their anti-money laundering (AML) obligations.

CB Payments argued that the complaint wasn't one for our service to consider, as it didn't relate to the electronic money account, but rather to the provision of cryptocurrency services by Coinbase Europe.

One of our investigators looked into the complaint. Initially they felt this wasn't a complaint our service can consider, saying that Mr H's losses were caused by the transfer of the cryptocurrency rather than anything to do with the electronic money services. Mr H disagreed and requested the complaint be decided by an ombudsman. The investigator later reconsidered this and said that there were aspects we could consider – such as whether CB Payments had properly met their AML obligations to monitor Mr H's account.

This was accepted by both parties. CB Payments submitted further information to say that there had been nothing to suggest there were problems with Mr H's transactions, such that they would have carried out further AML checks that would have revealed the scam. As such they didn't feel there was reason for them to refund him his losses.

The complaint was passed to me to decide the merits of the case. After reviewing the evidence, I issued my provisional decision which said:

There's also no dispute that Mr H is the victim of a cruel scam and has lost a considerable sum of money. I've no doubt this has had a considerable and ongoing impact on him. But I'm not persuaded that it's reasonable for CB Payments to refund his loss. I'll explain why.

It's accepted that Mr H made the deposits into his CB Payments account, and then authorised the purchases on cryptocurrency. Under the relevant regulations the starting

position is that the payments are authorised, and Mr H is liable for any losses that result from this.

CB Payments primary obligation to Mr H is to fulfil his payment instructions promptly when received. But like all regulated businesses, they have ongoing legal and regulatory obligations to monitor accounts to look for signs of risk. Mr H has highlighted their AML obligations. But here I've also considered what the industry best practice was for monitoring accounts for signs their consumer may be falling victim to fraud or financial harm. This does include looking for transactions that are particularly unusual or out of character.

In certain circumstances there would be an expectation CB Payments would take additional steps to verify payment instructions or carry out additional checks, before allowing a payment instruction to progress.

Mr H had already opened his CB Payments account before he was contacted by the scammer – and it hadn't been used regularly up to this point. So, it would have been difficult to say what the normal account operation would be. I also bear in mind that the product offered by CB Payments is quite a niche product – it's used almost exclusively to accept deposits that are then used to purchase cryptocurrency. So, it isn't like a bank account where a regular pattern of purchases and transactions could be built up. So, I'm not minded that the way Mr H used his account wouldn't have stood out as particularly unusual that CB Payments should have intervened. Particularly as the transactions in effect came in from his own bank account, and then left to the cryptocurrency account in his name.

I've also seen nothing to suggest that CB Payments would have been on notice that Mr H would be particularly vulnerable to an investment scam or should have reasonably drawn that conclusion from the account usage. His account was already open when he was drawn into the scam – which suggests to me he was already interested in purchasing and trading cryptocurrency. The account opening documents say the purpose of his Coinbase account was trading on other exchanges.

But even if CB Payments had seen something that gave them concern, this wouldn't have necessarily uncovered the scam. For this to happen CB Payments would have needed to have a detailed discussion with Mr H about the transactions he was making and give relevant warnings about the dangers of investment scams. But my understanding of the wider circumstances of this complaint is that Mr H had conversations along these lines with his bank in January 2021 – and wasn't dissuaded from making the transactions. I'm not satisfied an intervention from CB Payments would have prevented any further loss – and in any case I'm not satisfied an intervention was necessary.

Lastly, I'm satisfied that as Mr H sent his cryptocurrency off the Coinbase platform it follows that they wouldn't be recoverable by CB Payments.

I appreciate this decision will come as a disappointment to Mr H, and I've no doubt that this entire situation has been distressing. But I can't see that CB Payments have done anything wrong or caused the losses to him. As such I'm not directing them to do anything further.

CB Payments accepted this as an outcome. Mr H disagreed. He said the transactions were unusual enough to have raised red flags. He said CB Payments hadn't followed their regulatory AML requirements. He said the provisional decision was based on assumptions.

It now falls on me to review the evidence afresh and issue my 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.

Having done so, I remain satisfied with the conclusions reached in my provisional decision.

For clarity this decision solely covers the actions of CB Payments when providing Mr H with the electronic money account, and any acts or omissions by them. It does not cover any alleged acts or omissions by Coinbase Europe in the handling of a cryptocurrency account.

It's not disputed Mr H made the payments from his CB Payments account – so under the relevant regulations they are treated as authorised payments. Generally, this means Mr H is liable for any authorised transactions, so there's no automatic right to a refund even if the payment is made as part of a scam.

Mr H has highlighted provisions within AML regulations that he feels show CB Payments failed in their duty to protect. I did consider CB Payments' AML obligations before issuing my provisional decision. I don't agree that these AML regulations are directly comparable to fraud or scam prevention measures. These regulations outline the responsibilities for financial businesses to pick up on attempts to disguise the true origin of funds, or to mix fraudulent funds with genuine funds.

But that isn't what happened here. There's no dispute that Mr H genuinely opened his CB Payments account with his genuine details. The funds paid in were his own, from a bank account in his own name. And they were then used to fund cryptocurrency purchases from Coinbase Europe in his own name. So, I don't see there has been a failing in AML controls in relation to the opening of Mr H's account or these payments, as there has never been an attempt to disguise or conceal the nature of the funds.

And even if there were a breach of AML regulations – and to be clear, I'm not making a finding there was – then it doesn't follow that Mr H is entitled to a refund of transactions he authorised. There's no provision for this in the highlighted legislation.

I've considered the relevant industry guidance on preventing fraud and scams – along with CB Payments obligations to monitor Mr H's accounts for signs of fraud or financial harm. So, the key question is whether CB Payments should have done more to protect his account.

I appreciate Mr H feels these transactions should have been thrown up red flags, but I'm still minded that this isn't the case. There were smaller scale payments through the CB Payments account several months beforehand. But I don't agree this would be enough to set a pattern that means CB Payments would have cause to question Mr H about the transactions further. Likewise, the use of the funds to purchase cryptocurrency – which was then transferred out of the wallet – isn't something I consider alarming given the intended use of the account.

So, I don't see that CB Payments missed an obvious opportunity to prevent the scam from happening, such that they should be liable for refunding Mr H.

Mr H has also referred to a court case involving Coinbase in the US. But this court will have considered the legislation and regulation in its own jurisdiction. It doesn't follow that it would have an impact on Mr H's complaint – which has its own circumstances and took place in a different jurisdiction.

Overall, I appreciate that Mr H feels very strongly about his complaint and has suffered a considerable loss. But I don't see that CB Payments have done anything unreasonable or unfair in allowing these transactions to go through. I don't think it reasonable to expect them to cover Mr H's losses, and as such I'm not asking them to do anything further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 June 2023.

Thom Bennett
Ombudsman