

The complaint

Mrs A complains that Marks & Spencer Financial Services Plc (“M&S Bank”) have failed to refund £1,450 she lost as part of a cryptocurrency investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again in detail here. In summary, Mrs A paid £1,450 to Coinipop (a legitimate cryptocurrency platform) using her M&S Bank credit card in November 2019, where the funds were subsequently transferred on to a fraudulent broker (“Coin-Bits”) from the Coinipop platform. She realised she had been scammed when she was unable to make a withdrawal and discovered reviews online of others who said they had been scammed by Coin-Bits.

Mrs A reported the fraud to M&S Bank in February 2020. It raised a chargeback, which was successfully defended by Coinipop, as they had provided evidence to show that the money she deposited had been sent to a genuine crypto wallet on the platform. It also considered whether she had a valid claim under section 75 of the Consumer Credit Act 1974 (“Section 75”), but concluded that it wouldn’t cover the transaction, as gambling would not be considered as either “goods or services” under the Act.

Unhappy with this, Mrs A referred her complaint to this service, but our investigator didn’t uphold it. She concluded that there were no valid grounds for a chargeback or Section 75 claim to succeed, and also didn’t think the payment was unusual enough such that it ought to have triggered an intervention by M&S Bank. Mrs A didn’t agree, so the matter has been passed to me to determine.

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 these reasons:

1. With regards to Mrs A’s chargeback claim, Mastercard have clarified that if a merchant doesn’t make funds available on a trading account in which they’ve been deposited, then a chargeback right may exist. But in this instance, Mrs A made her payment directly to Coinipop for the purchase of cryptocurrency, which she duly received. Her funds would have been available to trade from her Coinipop platform; it was only when she transferred them to the scammer that the funds were subsequently lost. So, she could not claim that she did not receive what she had paid for using her M&S credit card, which was the purchase of the cryptocurrency from Coinipop. The merchant was able to successfully defend the chargeback claim by showing evidence that Mrs A’s funds had been deposited into her crypto wallet as intended after she purchased the currency. So, I do not think M&S Bank acted unreasonably by refusing to pursue the chargeback claim any further in light of this.
2. With regards to M&S Bank’s assessment of Mrs A’s Section 75 claim, I appreciate

she disagrees that her deposit with Coinipop could be considered a form of gambling (rather than purchasing goods or services) as the bank has claimed. But even if it could be regarded as the purchase of goods or services, it still cannot be said that she would have a claim for misrepresentation or breach of contract against Coinipop, given she received the cryptocurrency she paid for. I have not been made aware of any other compelling reason as to why Mrs A would've had a valid claim for misrepresentation or breach of contract against Coinipop, so there would have been no basis for a Section 75 claim to proceed.

3. I appreciate that Mrs A may have had successful claims and received a refund from other banks that were also part of the same scam. But the reasons why those claims were successful is not relevant here. I can only consider whether *M&S Bank* has dealt with Mrs A's Section 75 claim fairly based on the particular circumstances presented. The fact that other banks may have given a refund does not mean that M&S Bank would be obliged to do the same. And given the circumstances of Mrs A's disputed transaction did *not* fulfil all the requirements for a valid Section 75 claim to be made, I do not think the bank acted unreasonably by declining it.
4. I've also considered whether M&S Bank should have done more to prevent Mrs A 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.
5. However, the payment Mrs A made was not unusually large, such that it would have appeared unusual, as it was within her spend limit of £1,500. She was also making a payment to a legitimate company, rather than making it directly to a fraudulent broker. I understand that Mrs A feels that Coinipop are also scammers, but I've not seen enough persuasive evidence to demonstrate this is the case. There are no warnings about this company published by the FCA, for example, and neither are there any warnings about them on the IOSCO investor alerts platform. And I can also see that Coinipop are licensed and regulated in other jurisdictions outside of the United Kingdom, which would not be typical of a fraudulent company.
6. So, overall, I'm not persuaded there was any compelling reason for the payment to have been regarded as suspicious or indicating that Mrs A might have been at risk of falling for a scam. Therefore, I don't think M&S Bank can fairly be held liable for her loss here, as I'm not persuaded there was any obligation on it to intervene or prevent the payment in these circumstances.
7. Mrs A also submits that M&S Bank should have refunded the amount she lost under the Contingent Reimbursement Model (CRM) Code. However, the code only applies to authorised push payments (such as faster payments), so it would not cover the payment made from Mrs A's credit card.

I appreciate this will likely come as a disappointment to Mrs A, and I'm sorry to hear she has been the victim of a cruel scam. However, in the circumstances, I do not consider it would be fair and reasonable to hold M&S Bank liable for her loss.

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 Mrs A to accept or reject my decision before 6 June 2022.

Jack Ferris
Ombudsman