

The complaint

Ms C is unhappy CB Payments Ltd haven't reimbursed money she lost as a result of a scam.

What happened

Beginning in late 2019, Ms C invested significant amounts of money with an overseas investment firm. By early 2020, she became involved with a second investment firm and made a series of payments totalling well over £150,000 to it up to the end of June 2020. Of those payments around £26,000 were made using the services of CB Payments and are the subject of this complaint.

The second investment company appears to have denied requests by Ms C to withdraw her money, citing agreements she'd apparently entered into, before asking for further deposits and eventually claiming that her investment was lost and there were no funds left. At this point, Ms C suspected she'd been the victim of a scam and reported the matter to her bank.

A number of other complaints related to the same set of circumstances have already been decided by our service, notably a complaint against Ms C's bank which related, in part, to the same transactions which credited her CB Payments account and are the subject of this dispute.

CB Payments are an FCA-authorised electronic money institution. Coinbase UK were an unregulated entity providing cryptocurrency accounts and services. When Ms C opened an account with Coinbase, she actually entered into an agreement with the two different entities.

In practice, this means that when Ms C made the disputed transactions from her bank account to fund her Coinbase account, she first credited those funds into an electronic money account provided by CB Payments. From there she purchased cryptocurrency which was credited to one of her Coinbase UK cryptocurrency accounts. Finally, that cryptocurrency was sent off the Coinbase platform to a blockchain address, presumably controlled by the fraudsters.

When Ms C complained to Coinbase that it hadn't prevented her loss, it said that as she'd carried out the transactions herself, she was responsible for them. It also noted a warning had been published about the fraudulent investment company in February 2020, but it said that it had no connection with the fraudsters and would not have known that the destination of Ms C's funds was controlled by them.

Ms C referred the matter to our service. In summary, she argued that CB Payments had failed in its obligations to protect her from financial harm from fraud – particularly by failing to adequately carry out due diligence.

CB Payments, in its submissions to our service, said Ms C's complaint was about cryptocurrency being sent to a third party. As such it was a complaint about the

(unregulated) activities carried out by Coinbase UK, rather than those carried out by CB Payments. So, it didn't think our service had the power to consider the complaint.

One of our investigators looked into the matter. They were of the view that we could consider the elements of Ms C's complaint that related to the activities carried out by CB Payments, but not those carried out by Coinbase UK (including any complaint about the ultimate transfer of cryptocurrency). And, after considering the actions of CB Payments, they didn't think it had made a mistake – as it had no grounds to believe that Ms C was at risk of financial harm from fraud and neither was it obliged to make the kind of enquiries Ms C suggested.

In response Ms C provided lengthy submissions. I've considered everything she has said carefully and summarised her response below:

- A significant amount of good industry practice and regulator's rules and guidance demonstrates that CB Payments has a duty to protect her from financial harm from fraud, particularly as a vulnerable customer.
- Such obligations are particularly important in the case of CB Payments, because it is closely linked to a business offering high risk cryptocurrency trading (to the extent that the existence of the two entities was unknown to her).
- CB Payments, as experts in this area and being well aware of the risks, ought, at an early point, to have undertaken proper checks and spoken to her about the activity she was intending to carry out, including whether she was being coerced into making the payments. Had it done so, her loss would have been prevented because she would have listened to any warning it, as a regulated business, would have given. She notes that longstanding guidance issued by the regulator states that providing a warning about the risk of fraud is not considered investment advice.
- The investigator's view is far too simplistic to provide a satisfactory answer to the complaint and neither references the various obligations CB Payments has nor is correct in relation to the extent of those obligations – particularly in relation to establishing the intended use of the account.
- Neither does it properly take into account the fact she was an innocent victim of a scam, rather than an experienced investor and she disagrees that the starting point for the investigator's considerations should be that she is responsible for payments she has made.
- Our investigation shouldn't be limited to considering the role of CB Payments, but also whether the Financial Conduct Authority is properly overseeing CB Payments.
- She's provided significant submissions to give further background information to the scam and her personal circumstances, as well as the nature and severity of her vulnerability.

I note Ms C's comments that she wishes to be involved in this stage of the complaint and be an 'informed participant'. While I understand this desire, Ms C has provided significant submissions to our service and, at this stage, it is my role to decide the complaint. I haven't found that I need any further information from Ms C and, as such, I haven't been in touch with her in advance of 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.

I've considered all of Ms C's submissions carefully. I know that she will be disappointed that I haven't commented on each and every point. I don't mean this as a discourtesy to Ms C, but rather, as an ombudsman, it is my role to address only those points which I think are relevant to her complaint.

I also extend my sympathy to Ms C – she's clearly been through a devastating experience and I don't dispute that she was vulnerable when the events in question took place.

As a preliminary matter, it's important to state that my considerations are limited to the actions of CB Payments. The actions of the FCA in its regulation of CB Payments, as well as any wider points about the way in which it is regulated are outside of my remit. And, while Ms C might not have appreciated that she was entering into an agreement with two different entities, that doesn't change the fact she was, a fact that was made clear in the terms and conditions.

One of Ms C's chief contentions is that the starting point set out by the investigator – that it is her, rather than CB Payments, that (in the first instance) is responsible for transactions she's authorised, even in circumstances where she has been the innocent victim of fraud and was vulnerable, is incorrect.

Though, as I'll go on to discuss in more detail, this is a starting point, it none the less (taking into account everything Ms C has said) is an accurate statement as regards to Ms C's position in law. The relevant regulations here – the PSRs 2017 make no exception for account holders who have been tricked, no matter how cruelly, into carrying out such transactions. Neither does vulnerability invalidate authorisation.

The Contingent Reimbursement Model Code ("CRM Code") – a voluntary code – does somewhat reverse that position – the presumption being that a business will be responsible for a customer's loss due to scams like this, in all but a limited number of circumstances. But CB Payments are not a signatory to the CRM Code and it is therefore not relevant to this complaint.

As I say, the starting point is that Ms C is responsible for the payments which took place. She quite rightly points out that various regulator's rules and guidance, good industry practice (as well as what's fair and reasonable in the circumstances of a complaint) means, in certain circumstances, there might be occasions when, despite transactions having been authorised by the account holder, the business is, fairly and reasonably, responsible for refunding them.

The question here, quite simply, is whether any such circumstance applies.

Ms C has made extensive submissions in relation to demonstrating that she was vulnerable at the time and that the investment company she was dealing with were a scam. I don't dispute either of these points. What is in dispute is whether CB Payments ought to have known this at the time.

Ms C appears to argue both that any financial business should make fairly detailed enquiries of *any* new account holder and that there were specific reasons for CB Payments to do this – both because of their links to, and involvement in, cryptocurrency trading and because she was vulnerable in general and to this type of scam in particular.

I'm afraid I can't agree there is a general obligation on a financial business to make reasonably detailed enquiries of each new account holder. Relevant anti-money laundering obligations require the business to identify a customer and, in some circumstances, understand the nature and purpose of the new business relationship. While the latter

obligation might seem useful to Ms C, in practice this means little more than, for example, establishing that an account will be used as a personal account or, perhaps, going to be used for investing. And, at the very least here for there to be any chance for the scam to be uncovered, CB Payments would have had to have asked which business she intended to pay and, perhaps, established the circumstances surrounding the payments.

Neither do I think CB Payments is obligated to go further than any other financial business because of its relationship to Coinbase and the risk that its customers may fall victim to fraud involving cryptocurrency. I'm not aware of (and neither do any submissions provided by Ms C provide evidence of) any guidance or good industry practice which suggests it has additional obligations. And, I think such an obligation would likely be onerous if it required CB Payments to make fairly detailed enquiries of every new account holder. In fact, rather than the additional obligations which Ms C suggests, there are generally fewer obligations on electronic money institutions like CB Payments, compared to banks (an example being section 4.5 of the 2015 FCA publication 'Financial crime: a guide for firms', which Ms C references in her submissions, which, isn't applicable to CB Payments).

I've gone on to think about Ms C's characteristics that would have been reasonably known to CB Payments at the time. Again, there is no obligation for it to find out about her personal circumstances, just as there isn't an obligation for a bank to do the same when opening an account. It would have known little more than her personal details provided on application – none of which (including her age at the time) would have given any indication that she was at particular risk of financial harm from fraud.

It follows that I haven't found that CB Payments had an obligation to contact Ms C and discuss the use and purpose of her account (at least in the detail that would have been required to uncover the scam).

The next question I've considered is whether the activity which took place on Ms C's CB Payments account was so unusual and remarkable that it ought to have been concerned that she was at risk of financial harm from fraud and therefore intervened and provided a warning about scams before letting the transactions proceed (something I accept it could have done without providing investment advice).

I've seen nothing to suggest and neither does it seem likely that CB Payments (or Coinbase UK) would have known that the eventual destination of the funds was a fraudulent investment. Neither would it have had any concerns about the source of Ms C's funds – which had come from an account held in her own name.

Ms C's first deposit into her CB Payments account was £10,000. This amount was then used to purchase cryptocurrency of around the same value. While these are by no means insignificant sums, I don't think the activity would have appeared particularly unusual to CB Payments. The deposit of funds and immediate purchase of cryptocurrency is how CB Payments customers are likely to use their accounts – there's little value or benefit from simply depositing funds into a CB Payments account. Its primary purpose is to facilitate the purchase of cryptocurrency. And, without any previous account history to compare her actions against, CB Payments wouldn't be in a position to think that the transactions were unusual for Ms C, or represented a change from how she normally operated her accounts. The activity which took place after the initial deposit was similar in nature, albeit with smaller deposits and subsequent purchases of cryptocurrency. So, I can't see any reason CB Payments would be concerned about this activity either.

So, I don't think any of the activity which took place should have caused CB Payments concern and without a basis on which to say it ought to have provided a warning or questioned Ms C's actions – either when she opened her account or after any of the

subsequent transactions, there's no basis for concluding that it should have prevented her loss.

Whether such an intervention or warning would, in any case, have made a difference to Ms C's decision to continue with the payments is, given my findings above, not determinative. However, I do note that Ms C was already aware of an FCA warning about the fraudulent investment company when she made further payments to the fraudsters through CB Payments. So, it's reasonable to think that a warning which advised Ms C to check the regulated status of the fraudulent investment business (as might be expected where a financial business identifies a risk of an investment scam) is unlikely to have deterred Ms C.

Finally, given the nature of these transactions (with their eventual destination being an anonymous blockchain address), there was no reasonable prospect, nor practical method, of the funds being recovered.

I know Ms C won't agree with my decision and I recognise that she is a victim of crime, but I haven't found that the regulated financial business here – CB Payments Ltd – is responsible for her loss.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 27 May 2022.

Rich Drury
Ombudsman