

The complaint

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

What happened

Commencing on or around 28 September 2021, Mr G fell victim to what he describes as a multi-layered operation orchestrated by a company I'll refer to as 'Q'. Mr G says Q sold him an investment opportunity and he was persuaded to transfer money to CB and then purchase crypto via Coinbase. That crypto was sent onto the scammer and Mr G says he lost approximately €34,800 as a result.

Mr G complained that Coinbase failed to recognise that he was falling victim to a scam and also failed to intervene and appropriately warn him. He feels Coinbase could have prevented his loss and asked for it to return his money.

Coinbase replied and said on 28 September 2021 and 29 September 2021, Mr G sent Bitcoin to one external blockchain address. It said it has no control over this blockchain address and it cannot verify who owns it. As Mr G authorised the payments, they cannot be cancelled, reversed or recovered in accordance with his user agreement.

Mr G referred his complaint to this service.

CB highlighted Mr G's complaint does not relate to the issuance of e-money or the provision of any payment service provided by it as an e-money business. Rather, the complaint relates to digital asset services, over which we have no jurisdiction. It said the service complained about – specifically the sending of cryptocurrency is a service provided by Coinbase Europe which is unregulated.

One of our Investigators felt we could consider some of what Mr G had complained about. She didn't think CB could have known that he was falling victim to a scam as the transactions were in keeping with how an account of this nature would normally be operated. Mr G disagreed and asked for an Ombudsman to consider the complaint. He said in summary that:

- CB ought to have considered his transactions as unusual in line with good industry practice.
- CB didn't carry out AML and KYC checks as obligated.
- Good industry practice sets out scenarios where customers ought to be protected from financial harm and CB failed to protect him.

The case has therefore been passed to me for determination.

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 don't uphold this complaint for much of the same reasons as our investigator.

I can consider some aspects of this complaint. But I think there are several points Mr G has raised over the course of his complaint that our service doesn't have the power to consider. We've previously made CB aware of our jurisdiction to consider complaints like Mr G's and I've noted our Investigator explained this, so I don't intend to repeat in great detail here why our service can consider some of the complaint points that have been raised. But to summarise, because Mr G deposited fiat currency into his CB wallet and purchased crypto, he was provided with electronic money services by CB, and I'm satisfied Mr G's complaint relates, at least in part, to those services, we can consider this aspect of Mr G's complaint. However, when Mr G purchased crypto, it was added to his digital wallet held with Coinbase Europe. Coinbase Europe isn't a regulated entity and our service can't consider a complaint related to it, or any of the other crypto activity or transactions carried out from Mr G's wallet. This means I will not be able to consider Mr G's concerns about:

- Recovering his crypto
- Monitoring fraudulent blockchains
- Blocking a crypto payment for further checks

I've therefore thought about the aspects of Mr G's complaint that I can consider. The starting point for my considerations is that Mr G is generally solely responsible for payments he made himself. And it doesn't appear to be disputed that at the time the payments were made, he believed he was involved in a genuine investment opportunity. Mr G also made all the payments to his CB account from his own bank account and he could see a corresponding amount on the fake trading platform provided by Q. Mr G also had access to his CB account as he opened this himself.

As Mr G authorised the payments, he's presumed liable for the loss in the first instance. But that isn't the end of things. I agree with Mr G that CB should monitor its customer's accounts for activity that might suggest a customer was at risk of financial harm. This should include monitoring account activity for transactions that are unusual or out of character. In some circumstances, it should take additional steps, or carry out additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case I can see that Mr G's CB Payments account was newly opened. That meant there wasn't any genuine account activity to compare the activity against and CB wouldn't be able to understand what typical account activity for Mr G was. I've noted between 28 September 2021 to 29 September 2021, Mr G funded his account with €34,800 in three separate payments, purchased Bitcoin and then sent this on. The largest individual transaction was for €19,500 but I have to take into account that the activity of depositing funds into a CB account and purchasing crypto is (along with withdrawing funds back to a bank account) essentially the only activity which a CB account can be used for. So that activity carried out by Mr G isn't likely to have stood out as being unusual. It's also the case that the purchase of crypto using a CB account is, in effect, a transfer of funds between two accounts under the customer's control.

So, taking all of that into account, I can't agree that the frequency and amounts of the transactions (including the one-off larger payment I mentioned) meant that CB ought to have been concerned that Mr G was at risk of financial harm from fraud.

Mr G argues that CB didn't carry out appropriate AML and KYC checks, but I don't agree. There's no dispute that it was Mr G who opened and funded the account with his own, legitimate funds. AML obligations extend beyond the opening of an account and origins of the funds deposited to an account, those obligations are not always aligned with preventing financial harm from fraud. They are primarily aimed at preventing criminals laundering money. That means that even if CB had found the activity on Mr G's account to be suspicious from an AML perspective (though I don't agree there was any cause for suspicion here), it doesn't necessarily follow that the scam would have been uncovered.

For that to happen, I think CB would have had to have had a fairly detailed conversation with Mr G and discussed the wider circumstances surrounding the payment. It then might have been in a position to provide a warning about the dangers of falling victim to crypto scams. But, I think it would be onerous to expect CB to do that for every customer and every transaction. Instead, I think it was only obliged to do this where it had cause to be concerned about the risk of fraud. And, after considering Mr G's disputed payments, I don't think that was the case here for the reasons I've explained. As Mr G didn't contact or speak to CB during the scam, I also can't see any other reason for it to have suspected fraud.

I'm also satisfied that Mr G's funds could not be recovered as it is accepted they were sent off the Coinbase platform, in crypto, to a third party.

My final decision

Despite my natural sympathies for Mr G's loss, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 April 2023.

Dolores Njemanze
Ombudsman