

The complaint

Mrs S is unhappy that CB Payments Ltd won't refund money she was tricked into transferring to a fraudster.

What happened

In October 2020, Mrs S fell victim to an investment scam. As part of the scam she opened a CB Payments electronic money account and deposited funds into it from her bank account. She used those funds to purchase cryptocurrency from a separate business – Coinbase UK. She then sent cryptocurrency from her Coinbase UK account to the fraudster.

In November 2020, Coinbase customers based in the EEA, like Mrs S, were asked to enter into a new agreement with two different businesses – Coinbase Ireland (which provided the electronic money services previously provided by CB Payments) and Coinbase Europe (which provided the cryptocurrency services previously provided by Coinbase UK).

When it became clear she'd been the victim of a scam, Mrs S complained to Coinbase (responding on behalf of CB Payments/Coinbase Ireland and Coinbase UK/Europe). It said that it had no relationship with the recipient of her cryptocurrency, couldn't recover it and as she'd carried out all of the activity herself, it wasn't responsible for her loss.

Mrs S referred the matter to our service. CB Payments argued that our service had no power to consider the complaint as it didn't relate to the electronic money activities carried out by CB Payments, but rather the unregulated cryptocurrency activities carried out by Coinbase UK/Europe.

One of our investigators looked into the complaint. They thought there were aspects of it that we could consider – specifically those which related to whether CB Payments had carried out adequate checks when she opened her account and whether it had properly monitored her account for unusual or out of character activity. The investigator reviewed those aspects of the complaint but didn't think that CB Payments had made an error.

CB Payments didn't provide any further submissions, but Mrs S asked for an ombudsman to review her complaint as she argued that it should have done more to warn her about the risk of investing in cryptocurrency and it didn't carry out appropriate anti-money laundering ("AML") and 'Know Your Customer' ("KYC") checks. She also pointed to several codes of practice which she believed CB Payments had breached.

As no agreement could be reached, the case was passed to me for a 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.

There doesn't appear to be any dispute that our service cannot consider the actions of Coinbase UK or Coinbase Europe, so I don't need to comment on this further.

As already mentioned, it's also important to point out that after November 2020, Mrs S was no longer a customer of CB Payments. It follows that I can only consider the activity between October 2020 (when Mrs S opened the account) and November 2020 (when she accepted a new agreement with Coinbase Ireland). Of the over €30,000 Mrs S lost, the vast majority was deposited after she was no longer a customer of CB Payments.

It isn't in dispute that Mrs S made the purchases of cryptocurrency from her CB Payments account herself. So, the starting point is that she, rather than CB Payments, is responsible for the loss.

However, in line with good industry practice, I agree that CB Payments 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've noted that Mrs S' CB Payments account was opened for the purpose of investing in the fraudulent scheme. That means there was no genuine account history for CB Payments to compare the disputed activity against. I'm also conscious that a CB Payments account can only really be used for one purpose – to purchase cryptocurrency – and that's exactly what Mrs S was doing.

So, I think it would have been difficult for CB Payments to recognise, based on the activity which took place, that Mrs S was falling victim to a scam.

Mrs S argues that CB Payments didn't carry out appropriate AML and KYC checks, but I don't agree. There doesn't seem to be any dispute that it was Mrs S who opened the account and that the source of her funds was entirely legitimate. So, I don't think there was any reason for CB Payments to be concerned and neither is it clear how further checks of this nature would have prevented the scam. I think it's also important to state that the main purpose of AML regulations is to prevent the exploitation of the financial system by criminals to launder the proceeds of crime. Those aims aren't necessarily aligned with the prevention of financial harm due to scams.

What I think Mrs S suggests is that CB Payments ought to have carried out fairly detailed enquiries about why the account was opened and who the ultimate beneficiary of the cryptocurrency was, so that it could give a specific warning about proceeding with the transactions. But, I think this obligation would only be engaged where there was good reason to think that she might be at risk of financial harm from fraud. And, for the reasons I've already explained, I don't think there was.

I'm afraid that much of the guidance quoted by Mrs S does not apply to electronic money issuers such as CB Payments. The other guidance referenced does, I think, do little more than support the idea that CB Payments had an obligation to be on the lookout for unusual and out of character account activity (a fact I've already accepted).

Finally, I'm satisfied that Mrs S' funds could not be recovered as it is accepted they were sent off the Coinbase platform, in cryptocurrency, to a third party.

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 Mrs S to accept or

reject my decision before 23 November 2022.

Rich Drury
Ombudsman