

The complaint

Mr T is unhappy that CB Payments Ltd won't refund money he lost as a result of a scam.

What happened

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

On 16 November 2020, some Coinbase customers based in the European Economic Area, including Mr T, 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). Between 28 October 2020 and 30 November 2020, Mr T lost over €160,000.

When it became clear he'd been the victim of a scam, Mr T complained to Coinbase. It responded on behalf of CB Payments/Coinbase Ireland and Coinbase UK/Europe and said that it had no relationship with the recipient of his cryptocurrency, couldn't recover it and as he'd carried out all of the activity himself, it wasn't responsible for his loss.

Mr T referred the matter to our service. CB Payments argued that we 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. Initially they were of the view that we didn't have the power to consider it. But, after further consideration, 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 Mr T opened his account and whether it had properly monitored his 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 Mr T asked for an ombudsman to review his complaint. In summary, he said:

- CB Payments hadn't adhered to good industry practice and, given the volume, frequency and nature of the transactions he carried out, it should have found them to be suspicious and recognised the possibility that he was at risk of financial harm from fraud.
- It also hadn't adhered to anti-money laundering ("AML") regulations, including guidance that specifically addresses the particular dangers of cryptocurrency.
- Overall, he thought that CB Payments had breached its duty of care to him – a vulnerable customer who lost his life savings as a result of fraud.

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.

I'm very sorry to hear about what's happened to Mr T. He's lost a significant amount of money to a cruel scam and I can only imagine the impact this has had on him. But, unfortunately for Mr T, I'm unable to ask CB Payments to refund his loss. I'll explain why.

As already mentioned, it's also important to point out that after 16 November 2020, Mr T was no longer a customer of CB Payments. It follows that I can only consider the activity between 28 October 2020 (when Mr T opened the account) and 16 November 2020 (up to the point he entered into a new agreement with Coinbase Ireland). It's important to note that the vast majority of Mr T's loss came after 16 November 2020.

It isn't in dispute that Mr T made the purchases of cryptocurrency from his CB Payments account himself. So, the starting point is that he, rather than CB Payments, is responsible for the loss.

However, in line with good industry practice, I agree with Mr T 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.

I understand the fraudsters encouraged Mr T to open his CB Payments account. Mr T wasn't a customer of it prior to the fraud and it wasn't in a position to understand what his normal account usage looked like. In any case, CB Payments provide a specialised account – offering only the ability to buy and, receive the proceeds of sale from, cryptocurrency – so the activity carried out by Mr T would be unlikely to stand out as being unusual – particularly as the purchase of cryptocurrency was, in effect, a transfer between his own accounts. I also haven't seen anything to suggest that Mr T was particularly vulnerable to this type of scam or that CB Payments would have known about any vulnerability when Mr T opened his account.

There's also no dispute that it was Mr T who opened his account and that all the money deposited was his own, legitimate, funds. While I accept AML obligations extend beyond the opening of an account and the origins of the funds deposited into it, 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 Payments had found the activity on Mr T's account to be suspicious from an AML perspective (though I don't agree there was any reason for it to be suspicious here), it doesn't necessarily follow that the scam would have been uncovered.

For that to happen, I think CB Payments would have had to have had a fairly detailed conversation with Mr T 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 cryptocurrency scams. But, I think it would be onerous to expect CB Payments to do that for every customer. Instead, I think it was only obliged to do this where it had cause to be

concerned about the risk of fraud. And, though I accept Mr T made a substantial deposit, I don't think that was the case here for the reasons I've explained. As Mr T didn't contact or speak to CB Payments during the scam, I also can't see any other reason for it to have suspected fraud.

Finally, I'm satisfied that Mr T'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 Mr T to accept or reject my decision before 14 December 2022.

Rich Drury
Ombudsman