

The complaint

Miss O complains that Zopa Bank Limited (Zopa) is refusing to refund her the amount she lost as the result of a scam.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Miss O saw a foundation (X) page on Facebook that appeared to be setup by people that had won a substantial amount on the lottery. As Miss O was struggling financially, she reached out to X for support.

X responded to Miss O and offered to give her £100,000. Miss O was asked to setup an account with CryptoFXInvesting and to pay £350 into the account which she did using a different payment method from a different bank.

Once Miss O had made the payment, she was able to see the £100,000 had been credited to the CryptoFXInvesting account, although when Miss O tried to make a withdrawal, she was faced with having to make further payments before the funds to be released.

X told Miss O that it had her address as she had previously provided identification documents, and that she had to make the payments that were requested. Miss O made several payments as directed by X, but after speaking with a friend she realised she had fallen victim to a scam.

Miss O made the following payments via her Zopa Credit card:

Date	Payee	Amount	Payment method
21 July 2022	BITCOINUK	£480	Credit card
22 July 2022	BITCOINUK	£480	Credit card
23 July 2022	BITCOINUK	£400	Credit card

Miss O has been unable to recover any of the payments she made on her Zopa credit card.

Our Investigator considered Miss O's complaint and thought it should be upheld. Zopa disagreed so this complaint has been passed to me to decide.

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.

It's clear from the information available that Miss O has fallen victim to a cruel scam. The evidence provided by both Miss O and Zopa sets out what happened. What is in dispute is whether Zopa should refund the money Miss O lost due to the scam.

Recovering the payments Miss O made

Miss O made the payments into the scam via her credit card. When payments are made by card the only recovery option available to Zopa is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Miss O was dealing with X, which was the person that instigated the scam. But Miss O didn't make the card payments to X directly, she paid a separate cryptocurrency exchange. This is important because Zopa was only able to process chargeback claims against the merchant she paid, not another party.

The service provided by the cryptocurrency exchange would have been to convert or facilitate conversion of Miss O's payments into cryptocurrency. Therefore, they provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Miss O paid. As the cryptocurrency exchange provided the requested service to Miss O any chargeback attempt would likely fail. So, I'm confident Zopa was unable to recover the funds Miss O sent into the scam.

Should Zopa have reasonably prevented the payments Miss O made?

Miss O has accepted she authorised the payments that were made from her Zopa card, so the starting point here is that Miss O is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Zopa should have stepped in when Miss O was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

The payments Miss O made into the scam were not high in value and were to what appeared to be a legitimate business. It wouldn't be reasonable for me to say Zopa should step in every time one of its customers makes a payment to a business they haven't paid before. So, I don't think the payments themselves would have reasonably triggered Zopa's fraud prevention systems prompting it to take any action.

Zopa has told us that it does not support payments in relation to Bitcoin and the reason these payments were not blocked were because BITCOINUK kept changing the name of the payee account tricking the VISA system. I think this is a reasonable explanation as to why the payments were not automatically stopped and I don't think it was unreasonable that the payments were processed.

However, a call took place on 21 July 2022 between Miss O and Zopa before the above payments were processed.

I've listened to a recording of this call. Miss O explained that she was attempting to make a payment to Moonpay and needed to make a deposit of £400. After a short hold the Zopa representative returned to the call and explained Zopa did not support payments to Bitcoin.

This call was important as Miss O had clearly explained she was intending to make a crypto payment from her card. Zopa specifically stop this type of payment because of the risk attached to them, this is even highlighted in Zopa's terms and conditions. At this time, I think it would have been reasonable for the Zopa representative to have asked Miss O more about the payments she was attempting to make, and if it had I see no reason why Miss O would not have given details about why she was making the payments.

The circumstances behind the payments Miss O was attempting to make show clear characteristics of a scam. So, I think had Zopa questioned Miss O about the payments it's likely it would have uncovered the scam and prevented Miss O incurring any loss. Zopa is therefore responsible for her loss.

Putting things right

I've explained above why I think Zopa Bank Limited is responsible for Miss O's loss.

Zopa Bank Limited should refund Miss O £1,360, associated interest and charges and pay 8% interest on payments made towards the balance arising from these payments.

My final decision

I uphold this complaint and require Zopa Bank Limited to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 10 August 2023.

Terry Woodham
Ombudsman