

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 January 2021, Mr G says he fell victim to a multi-layered operation orchestrated by a company I'll refer to as 'B'. Mr G says B sold him an investment opportunity and he was persuaded to transfer money to his existing account with CB and purchase crypto via Coinbase. That crypto was sent onto the scammer and Mr G says he lost approximately £17,660 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 Mr G purchased Bitcoin and Ethereum and sent it to a number of external blockchain addresses. It said it has no control over these blockchain addresses and it cannot verify who owns them. 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 office.

CB objected to this office considering the complaint on the basis that the 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 couldn't consider the complaint based on the fact that the matter complained about was an unregulated activity and therefore something this office cannot consider. Mr G didn't agree and asked for an Ombudsman to review the complaint. He said in summary that:

- CB provided services to scammers and sent his crypto to them.
- Good industry practice ought to mean that CB protect customers from financial harm as a result of fraud or financial abuse.
- CB as a member of the Electronic Money Association ('EMA') should have had systems in place to detect, prevent and respond to fraud and adhere to anti-money laundering ('AML') regulations.

On 6 February 2023, I issued a provisional decision not upholding this complaint. For completeness, I repeat my provisional findings below:

I don't intend to uphold this complaint for reasons I'll go onto explain. But I have reached different conclusions to that of our investigator, hence my invitation to both parties to provide any further information they wish for me to rely on before making my final decision.

I think I can consider some aspects of this complaint. But I think there are several points Mr G has raised 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, 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 B. Mr G also had access to his CB account as he opened this some time before he got involved with B.

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.

Mr G already held his account with CB before the scammers persuaded him to invest with B. I've therefore reviewed his CB account from May 2020 (when it appears to have first been funded). I've noted that Mr G regularly used his CB account to deposit and withdraw funds as well as buying and selling crypto. Transactions prior to the disputed payments would range from £1 to around £1,500. His account was regularly used and sometimes there were multiple transactions on any one day. As CB provide a specialised account – offering only the ability to buy and, receive the proceeds of the sale from, crypto, I don't think the activity that took place from 11 January 2021 to April 2021 (the period of the scam) was particularly unusual when considering the normal operation of Mr G's CB account as this is what he commonly used his account for.

There's also no dispute that it was Mr G who 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.

Responses to my provisional decision

CB replied to my provisional findings accepting them and didn't have anything further to add.

Mr G replied to my provisional findings confirming he had nothing further to add.

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.

As the parties didn't have any further comments to add to my provisional decision, I see no reason to depart from what I've said.

My final decision

My final decision is that 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 21 March 2023.

Dolores Njemanze
Ombudsman