

The complaint

Mr E complains that Think Money Limited trading as thinkmoney ('thinkmoney') didn't reimburse him the funds he lost after he fell victim to a scam.

What happened

Mr E is represented in this case but for ease I'll refer to Mr E throughout this decision.

Mr E says that he met someone on a dating app and messaged her for a few weeks before she told him that in her spare time she invests. He says that the person he was messaging provided him with evidence of her success and he asked if she could teach him how to trade. Mr E didn't know at the time, but the person he was messaging, and others he was later referred to, were scammers.

The scammer provided Mr E with a link to an investment company I'll refer to as X and advised Mr E to open an account with a cryptocurrency provider I'll call S. Between April and June 2022 Mr E made multiple payments to S totalling over £27,000. Funds were then transferred from S to wallet details provided by the scammer.

The payments started off small but on 9 June 2022 Mr E attempted to make a payment of £9,000 to S soon after a transaction of £3,000. The transaction was stopped by thinkmoney and a call took place. In that call Mr E was asked who he was paying, the origin of the funds and the reason for the payment. Mr E said he was paying S, he'd got a loan and the reason for the payment was home improvements.

Mr E realised he had been scammed when he wanted to withdraw funds and was asked to pay more. The scammer also stopped communicating with him.

Mr E didn't report what had happened to thinkmoney but instructed a firm of solicitors which wrote to thinkmoney in November 2022. After gathering information from Mr E's representative, thinkmoney didn't agree to refund any of his losses. It said that the transactions on the account were like those of a customer using the account to invest, the payments were going to a legitimate company (S) and Mr E also received credits from S. In thinkmoney's opinion, the payments weren't unusual, and an unusual pattern of payments didn't emerge.

Thinkmoney noted that when it asked Mr E about the £9,000 transaction on 9 June 2022 he lied and said it was for home improvements, so it was unable to provide relevant advice or uncover the scam. Finally, thinkmoney said that given the level of research Mr E says he completed he'd have still thought the investment opportunity was genuine if it had asked him further questions.

Our investigation so far

The investigator who considered this complaint recommended that thinkmoney refund 50% of Mr E's loss from and including the £9,000 payment on 9 June 2022. He said that the £9,000 transaction on 9 June was unusual but thinkmoney didn't go far enough when it discussed it with Mr E. He felt that thinkmoney should have asked more questions around why Mr E was making payments for home improvements to a company predominantly used for cryptocurrency and to send money in different currencies. The investigator said that if thinkmoney had asked more detailed questions it's likely the scam would have been uncovered and further loss prevented.

Initially Mr E didn't agree with the investigator's findings and said thinkmoney should have intervened earlier. After considering the investigator's response, Mr E accepted what the investigator said but thinkmoney didn't. In summary, it said:

- S isn't just a digital wallet which provides cryptocurrency, it also allows customers to make payments online.
- The £9,000 transaction was larger than normal, but the funds were going to an account in Mr E's name with a legitimate company.
- Sufficient questions were asked in the call on 9 June 2022.
- It's not possible to confidently say what would have happened if thinkmoney had asked Mr E further questions about the home improvements he said he was paying for. It's also common to take out a loan and use the funds for home improvements.
- It's unlikely the scam would have been uncovered given that Mr E didn't tell thinkmoney the truth.
- If Mr E had said the funds were being transferred for an investment thinkmoney would have asked additional questions, but this wasn't what happened.

The complaint has been passed to me to issue 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The CRM Code doesn't apply to this case for a number of reasons including the fact that thinkmoney hasn't signed up to it.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

But, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for thinkmoney, as an electronic money institute ('EMI'), to take additional steps or make additional checks before processing a payment, in order to help protect its customer from the possibility of financial harm from fraud. For example, if a customer made a payment request that was out of character given the normal use of an account, I'd expect thinkmoney to intervene and ask questions about the intended transaction before processing it and to provide a suitable warning.

The investigator included a table of transactions in his view, so I haven't duplicated the table in my decision. I asked Mr E about the transactions highlighted by the investigator in his view and whether these were also scam payments. Mr E confirmed that they were scam payments that had been missed so these transactions also need to be considered.

In this case, I don't consider thinkmoney acted unfairly or unreasonably in allowing the early payments to be made. I don't consider that adding S as a new payee and making low value payments over a period of time ought reasonably to have caused thinkmoney to be concerned he may be the victim of a scam.

I agree with the investigator that thinkmoney ought reasonably to have had concerns about Mr E's account activity when he made the £9,000 payment in June 2022, particularly given

the value of it. Before 9 June 2022 the highest value payment to S was for £1,250. When thinkmoney stopped the £9,000 payment on 9 June 2022 Mr E had already made a payment to S of £3,000 so there was a significant increase in spending. Mr E's account had also gone into overdraft before it was credited with a loan of £13,000.

I also agree with the investigator that thinkmoney didn't do enough in its conversation with Mr E on 9 June 2022. Thinkmoney say that Mr E didn't tell the truth about the reason for this payment and that had he explained he was making an investment thinkmoney would have read a script and asked if he was investing in an FCA regulated company. Thinkmoney also said that if it established the payment related to cryptocurrency it would not have released it. But Mr E said the payment was for home improvements funded by a loan which wasn't unusual, and the funds were going to an account in Mr E's name at a legitimate company.

Whilst the company Mr E sent his funds to isn't just a cryptocurrency provider and it offers other services, I don't consider it was reasonable for thinkmoney to accept Mr E's response that he was paying for home improvements without further probing. By the time Mr E made this payment he had already received four credits from S for amounts ranging from £19.09 to £711. This kind of activity is common when a customer invests. I consider thinkmoney ought reasonably to have recognised this and asked Mr E some questions around why he was paying S rather than a building company directly and what the credits he had received related to.

I note that thinkmoney said in its final response letter that, "*the transactions on the account were like those expected of a customer using their thinkmoney account to invest*" so it seems thinkmoney accepts that irrespective of Mr E's answer to its question about the payment reason, it recognised the most likely reason for the transactions. So, whilst S is not just a cryptocurrency platform, I'm satisfied it looked like Mr E wasn't using the other services S offers.

The fact that thinkmoney established that the funds originated from a loan was more concerning and ought to have been a further red flag to thinkmoney. The activity on Mr E's account was consistent with a cryptocurrency related investment scam that was being funded using borrowed money.

I'm also not persuaded that the fact the payments were going to Mr E's own account and so appeared to be going somewhere safe and within his control should have satisfied thinkmoney that he wasn't at risk of harm. This is because by January 2019, banks had, or ought to have had, a good enough understanding of how these scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from fraud.

I've gone on to think about what was most likely to have happened if thinkmoney had asked the kind of probing questions I consider it ought to have when it intervened. I'm not satisfied Mr E would have been able to provide plausible answers to such questions and the real reason for the payment would have been uncovered and no further payments made. I consider that he'd have struggled to give credible answers to questions about the work he was having done, why he was using an unusual payment method and why he'd received credits from S.

I'm satisfied that Mr E should share the responsibility for his loss with thinkmoney for broadly the same reasons as the investigator, which I've summarised below:

- Mr E found out about the investment opportunity from someone he had never met and had only exchanged messages with for a few weeks so had no reason to trust to the extent he did.
- I haven't been able to find any reliable reviews of X. The absence of such reviews ought reasonably to have caused Mr E concern.
- There was nothing to link the scammer to X – the company she said she worked for.

- I have seen some messages relating to the scam in which the scammer told Mr E he would get a 35% rate of return within a day and could withdraw at any time. There was another message in which a scammer recommended a basic plan for Mr E and went on to say, "*The basic plan requires an investment amount of 328 USDT and can easily earn more than 100 USDT per day*". Such returns aren't realistic, especially in such a short timescale so Mr E ought reasonably to have been more cautious.
- Mr E wasn't provided with any documentation or a contract to set out what had been agreed. This isn't what I'd expect of a genuine investment company.
- By the time Mr E made the £9,000 transaction it's clear from the messages he has shared that he had serious concerns. Mr E even said he was "out" but continued to make payments.

Putting things right

Whilst I'm sorry to hear about the actions of a cruel scammer, I can't reasonably ask thinkmoney to refund Mr E in full. Thinkmoney should refund 50% of the payments made from 9 June 2022 (including those highlighted in the investigator's view that were made after this date). I can see that Mr E has received credits from S (on 17 and 30 June and 7 July 2022) after 9 June 2022 which should be deducted before calculating 50% of the remaining loss.

My final decision

I require Think Money Limited trading as thinkmoney to:

- Reimburse 50% of all scam transactions from and including the £9,000 transaction on 9 June 2022. The credits Mr E received from S should be deducted from the total loss figure before the 50% calculation is made (as set out above).
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement.

If Think Money Limited trading as thinkmoney is legally required to deduct tax from the interest it should send Mr E a tax deduction certificate so he can claim it back from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 26 December 2023.

Jay Hadfield
Ombudsman