

The complaint

Mr D complains that Goldman Sachs International (GSI) won't refund money he lost in an investment scam.

What happened

What Mr D says:

Mr D had a brokerage account with GSI. It was for the purpose of carrying out investments in securities, foreign exchange and equities. It held a combination of cash and investments and was for execution-only trades.

His father was in a nursing home and he needed money to help pay for his medical fees. In May 2022, he was contacted via social media by a trader who claimed he was making money by trading with a bitcoin company. Mr D did some research and found the trader had many followers on social media. And he saw the bitcoin company was regulated in the UK and US. The trader asked him to open an account with a crypto exchange (which I will call 'A'). Mr D made the following payments from his GSI account to his crypto wallet:

Date	Payment	Amount
6 June 2022	Payment to crypto wallet A	USD 12,000
24 June 2022	Payment to crypto wallet A	USD 2,400
29 August 2022	Payment to crypto wallet A	USD 650
Total		USD 15,050

Mr D made some other payments to A from another bank – which was the subject of a separate complaint to this service.

The trader coached Mr D to make payments from his crypto wallet to the bitcoin company. He was shown the website of the bitcoin company and it showed he was apparently making profits. The trader asked him to pay more money such as a success fee, purchase of an access 'key', and insurance. Mr D then asked for profits to be returned, but none arrived.

Mr D realised he'd been the victim of a scam. The trader and the bitcoin company were fake.

Mr D reported the scam to the police and Action Fraud. He thought he was dealing with a professional but was wrong. He says his mental health has suffered – and he has sleepless nights.

Mr D says GSI should've done more to protect him. He'd had an account with GSI for many years, and he hadn't made any cash payments from the account for a long time. So – GSI should've realised the payments were large and unusual. He says GSI should've intervened; questioned and stopped the payments. He says GSI should refund the money he's lost.

Mr D reported the scam to GSI in December 2022.

What GSI said:

GSI declined Mr D's complaint and said:

- Mr D made the payments from his GSI account and authorised them online.
- There wasn't any indication to GSI that there was a fraud.
- The payment intermediary (A) was a registered crypto exchange; and is registered with the Financial Conduct Authority (FCA).
- The value of the payments wasn't considered large and was in line with previous transactions on Mr D's account.
- The nature of the brokerage account held by Mr D was such that an investment into crypto currency wasn't considered unusual. It wasn't GSI's duty to ask questions of Mr D and his investment decisions.

Our investigation so far:

Mr D brought his complaint to us. Our investigator didn't uphold it. He said the nature of the brokerage account was to make investments such as crypto currencies. It was a brokerage account and wasn't a traditional bank current account. So we wouldn't expect GSI to intervene in the same way as a bank operating a current account.

He could also see Mr D made a payment of USD25,000 just prior to the scam payments – in June 2022. So even if we felt GSI needed to intervene, the scam payments didn't look out of character.

On recovery – he didn't think GSI could've done anything to recover the funds as Mr D didn't report the scam for five months, and it was very likely the funds were removed well before that time.

Mr D didn't agree. He said the GSI account was dormant and there hadn't been any payments for a long time. He said the payment of USD25,000 wasn't relevant as it was to an account in his name with another bank. The payee (the crypto wallet) was a new payee. The three transfers were all made in a short period of time. He asked that an ombudsman look at his complaint, and so it has come to me to make 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.

I'm sorry to hear that Mr D has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr D didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, 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. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider GSI should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether GSI acted fairly and reasonably in its dealings with Mr D when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case because GSI hasn't signed up to it. But even if GSI had done so, the Code wouldn't apply in this case - because it applies to faster payments made to another UK beneficiary – and in this case, the payments were made to Mr D's own account with the crypto exchange A.

The important matter here is whether this was a payment that GSI might reasonably have considered unusual, and therefore whether they should've held or stopped the payments and contacted Mr D about some or all of them.

And here, I considered the nature of Mr D's brokerage account with GSI – this is important in the context of this complaint.

It is a brokerage account. I looked at Mr D's statements: it held a combination of cash and equity investments. In May 2022 (prior to the scam payments), the balances were USD40,100 (cash) and USD77,600 (investments). I then looked at the GSI brokerage account and the nature of it.

- The brokerage account is for the purposes of making investments.
- It is operated on an 'execution-only' basis i.e. GSI don't question the investment decisions, nor advise on the decisions.
- It is for 'sophisticated investors' only.
- So, the account can't be considered a 'bank account' in the traditional sense.

GSI also told us that given the nature of the brokerage account:

- It wasn't for GSI to question what Mr D was doing when he made the payments to the crypto exchange A.
- It isn't unusual for account holders to invest in crypto currencies.

I looked at Mr D's statements from May 2020 to the time of the scam payments – and there aren't any cash payments during that time, other than the payment of US25,000 to Mr D's own bank account in June 2022. But – in the context of this complaint, I don't think that means GSI needed to intervene for the reasons I've explained.

Therefore, on balance, in the circumstances of this complaint, I don't consider GSI needed to question the payments made by Mr D.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes

place. I looked at whether GSI took the necessary steps in contacting the bank that received the funds – in an effort to recover the money. But in this case, given that the scam took place in June 2020 to August 2022, and Mr D contacted GSI in December 2022 – there wasn't any point in GSI doing so as normally in such scams, funds are removed from the recipient bank immediately.

I'm sorry Mr D has had to contact us in these circumstances. I accept he's been the victim of a cruel scam, but I can't reasonably hold GSI responsible for his loss.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 April 2024.

Martin Lord
Ombudsman