

The complaint

Mr N complains that Zempler Bank Limited trading as Cashplus didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In June 2022, Mr N had been researching different types of investments when he saw an advert on social media for an investment company which I'll refer to as "G".

He completed an online form and was contacted by someone claiming to work for G who told him he'd be given a broker, he'd be required to pay a small fee, and he could back out at any time. He sent Mr N a link to the trading platform and told him they'd be investing in gold and oil.

Mr N did some research and could see that investing in gold and oil was more profitable than investing in cryptocurrency. He also checked G's website which seemed extremely professional, and he could see it included a contact us section and reviews from other investors.

He made an initial payment and was contacted by someone claiming to be a broker, who I'll refer to as "the scammer". The scammer asked him to download AnyDesk remote access software so he could show him how to open an account with G, which required him to provide his ID and proof of address. He was then told to disconnect from AnyDesk and create his own login details so the scammer wouldn't see his login details.

Mr N was able to see the initial payment on the trading platform and he remained in daily contact with the scammer through phone calls and messages. The scammer told him it would be a slow process due to the small amount he had initially invested, and he'd need to invest more if he wanted to see greater returns.

Between 16 June 2022 and 7 October 2022, Mr N made sixteen faster payments totalling £26,398.54 to various international accounts and a cryptocurrency exchange. He stopped investing in October 2022 due to medical issues and at the end of November 2022, the trading platform was showing a balance of around £74,000. But when he asked to make a withdrawal, he was told he had to pay a fee. Between 21 October 2022 and 23 December 2022, he made three further payments totalling £6,750, but he realised he'd been scammed when he didn't receive any funds and he lost contact with the scammer.

Mr N complained to Cashplus with the assistance of a representative who said Mr N had never invested before and that he should have been given effective warnings which would have enabled him to understand the risk of investment scams. But Cashplus said it was unable to locate any of the disputed transactions and was unable to uphold the complaint.

Mr N wasn't satisfied and so he complained to this service with the assistance of a representative who argued that Cashplus should have intervened because the payments were unusual as they represented a sudden increase in spending, and he was making large payments to an account in his own name. Further, he was making payments to new payees linked to cryptocurrency, he made multiple payments to the same payee on the same day, and there were large amounts of money coming into the account and quickly being transferred out. The representative explained Mr N normally uses the account for day-to-day expenditure with small debit card transactions and hadn't previously made payments to cryptocurrency platforms.

They said Cashplus should have asked Mr N why he was making the payments, who he was trading with, how he found out about the company, whether he'd researched the company, whether he'd checked the Financial Conduct Authority ("FCA") website to ensure the company was regulated, whether he'd been predicted unrealistic returns, whether he'd made any withdrawals, whether he'd downloaded any remote access software and whether he'd been coached to lie to his bank and had it done so the scam could have been prevented.

Our investigator thought the complaint should be upheld. He thought the payments were unusual because Mr N was paying a new payee and the largest payment from the account prior to the £5,000 transaction on 21 June 2022 was £658.32.

He commented Cashplus hadn't produced any transcripts or recordings of the calls that took place when Mr N tried to make the payments, but he was satisfied that if it had asked probing questions, it would have been able to detect the scam. So, he thought it should refund the money he'd lost.

However, he thought Mr N should share some liability for his loss because he didn't do sufficient due diligence before committing to the investment. He explained he didn't check the Financial Conduct Authority ("FCA") website, which would have uncovered that G wasn't authorised. And he failed to seek independent advice, which he would have expected from someone with no investment experience.

Cashplus asked for the complaint to be reviewed by an Ombudsman arguing Mr N failed to undertake sufficient due diligence before committing to the investment. It didn't accept the payments were unusual because they were spread out over a few months, and it said there was no evidence Mr N wouldn't have continued with the payments if it had intervened.

My provisional findings

I was satisfied Mr N 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr N is presumed liable for the loss in the first instance.

I explained there is a warning about G on the Financial Conduct Authority ("FCA") website which indicates its operating financial services within the UK without permission. I also found Mr N's submissions to be plausible and persuasive. So, I thought it was most likely he was scammed along similar lines of many scams we see in this particular area.

But although Mr N didn't intend him money to go to scammers, he did authorise the disputed payments. Cashplus is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I thought about whether Cashplus could have done more to prevent the scam from occurring altogether. Cashplus ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have intervened to warn Mr N when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Cashplus to intervene with a view to protecting Mr N from financial harm due to fraud.

I considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr N normally ran his account and I thought they were. The first four payments were for relatively small amounts and so even though Mr N was paying a new, international payee, I wouldn't expect Cashplus to have intervened. But when he made the £5,000 payment on 21 June 2022, this was a large payment to a cryptocurrency exchange, and I was satisfied the payment was high when compared to the previous spending on the account.

I thought Cashplus should have contacted Mr N and asked him why he was making the payment, whether there was a third party involved and if so how he'd met them, whether he'd downloaded remote access software, whether he'd been promised unrealistic returns, whether he'd made any withdrawals, whether he'd been coached to lie, whether he'd done any due diligence and whether he'd been advised to make an onwards payment from the cryptocurrency exchange.

It was clear from the limited information that Cashplus has submitted that there were some calls with Mr N around the time of the payments, but the notes don't show he was asked any questions about the payments or that he was given any scam warnings, written or otherwise, and in the absence of this evidence I couldn't conclude that it did what we would expect it to have done.

As there's no evidence that Mr N was coached to lie, I was satisfied he'd have told Cashplus that he was making payments to an investment that he'd learned about online and that he was being assisted by a broker who had encouraged him to download remote access software. This should have been enough to alert Cashplus that there was a potential problem, and it could then have provided a tailored investment warning and advice on additional due diligence, including checking G was registered with the FCA and potentially seeking independent financial advice. I would also expect him to have been advised that if G was offering financial products in the UK without authorisation, then this would indicate it could be a scam.

I hadn't seen any evidence that Mr N had ignored any warnings or other signs that G might be operating a scam and so I had no reason to think he wouldn't have checked the FCA register. And had he done so he'd have realised he was taking investment advice from a company which wasn't regulated by the FCA, and I think it's likely he'd have chosen not to make any further payments.

Contributory negligence

I explained there's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence. But Mr N hadn't invested before and so this was an area with which he was unfamiliar. He wouldn't have known how to check the information he'd been given or to check the FCA website, so I didn't think it was unreasonable that he didn't see the FCA warning. And I hadn't seen any evidence that there was any other adverse information about G in the public domain at the time he made the payments.

This unfamiliarity was compounded by the sophisticated nature of the scam, the fact he trusted the broker and the fact he believed the trading platform was genuine and was reflecting the fact his investments were doing well.

I accepted he was taking advice of someone he'd met on social media, but he wasn't cold called, and he wouldn't have known the use of AnyDesk is a red flag for fraud. Further, he was told he could back out at any point, he wasn't put under any pressure to invest, and I was satisfied he stopped making payments as soon as he began to suspect there was a problem.

Consequently, I didn't think the settlement should be reduced for contributory negligence.

Compensation

I stated Mr N isn't entitled to any compensation.

Recovery

I thought it was very unlikely that there was any prospect of a successful recovery.

Developments

Cashplus has indicated that it doesn't accept my provisional findings. In further arguments, it has explained that Mr N held the account for several years and that he'd transferred funds into the account from a trusted account in his own name.

It has also argued that the settlement should be reduced for contributory negligence stating that Mr N didn't do sufficient due diligence and he should have made more effort to check G was genuine before committing to the investment. It has also questioned why he continued to send funds to the scam after he asked for a withdrawal.

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 note the additional arguments put forward by Cashplus, but the findings in my final decision will be the same as the findings in my provisional decision.

Cashplus has suggested the payments weren't unusual because this was an established account and Mr N was using funds paid into the account from a trusted account in his own name. But I maintain my position that it should have intervened when he made the £5,000 payment on 21 June 2022, because it was a large payment to a cryptocurrency exchange, and the payment was high value when compared to the previous spending on the account.

Regarding the argument that Mr N failed to do sufficient due diligence, I remain satisfied that his inexperience meant that he wouldn't have known to check the FCA website, and I haven't seen any evidence that there was any other adverse information about G in the public domain which would have alerted him to the fact G was operating a scam. Mr N has explained that he did some basic research and checked G's website which seemed extremely professional and included a contact us section and reviews from other investors and I'm satisfied he felt this was reasonable in circumstances where he trusted the broker and he wasn't aware that there were a number of red flags present.

Cashplus has also questioned why Mr N continued to make payments beyond the point he'd asked to make a withdrawal, but I'm satisfied genuinely believed he was required to pay fees and that he stopped making payments as soon as he began to suspect there was a problem. So, I don't accept that he acted negligently or that he contributed to his own loss.

My final decision

My final decision is that Zempler Bank Limited trading as Cashplus should:

- refund the money Mr N lost from the fifth payment onwards.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If Zempler Bank Limited trading as Cashplus deducts tax in relation to the interest element of this award it should provide Mr N with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 22 November 2024.

Carolyn Bonnell
Ombudsman