

The complaint

Mr N, has complained that UAB ZEN.COM (“Zen”) failed to refund the money he lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision.

In summary though, my understanding is that Mr N came across a company that purported to be an investment firm that I will call B.

Mr N then made a number of transfers from his Zen account to a third-party company that exchanged the funds into crypto currency. Which seems to have ultimately been sent onto B.

After some time, Mr N realised he had been scammed when he was unable to withdraw the profits that he made. Mr N asked Zen to refund these payments, as he believes Zen should have done more to prevent him from being scammed in the first place. Zen did not agree with this, but it did offer £350 compensation for the way it investigated Mr N’s complaint.

One of our investigators looked into this matter and he thought that Zen should have intervened more than it did. However, he did not think that any intervention would have likely uncovered or stopped the scam from occurring – based on the answers that Mr N gave during an intervention from a different financial institution. The case was then reviewed again by a senior investigator who also did not think that Zen should refund the transactions in question. He did think though that the £350 offered by Zen was appropriate.

Mr N did not agree with this and therefore his complaint has been passed to me to issue a 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, I am required to take into account relevant law and regulations, regulators’ rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is more likely to have (or would have) happened, in light of the available evidence and the wider circumstances.

Mr N has written at some length about the issues that he has faced. I may not comment on everything Mr N has told us, nor every individual point raised. I want to reassure both parties that this doesn't mean I consider things unimportant, nor that I haven't reviewed everything. While I've carefully thought about all of the information on the case, I'm going to focus on what I consider the crux of Mr N's complaint and the key facts. This reflects the informal nature of our service.

It isn't in dispute that Mr N authorised the disputed payments he made from his Zen account. The payments were requested by him using his legitimate security credentials provided by Zen. The starting position is that Zen ought to follow the instructions given by their customers, in order for legitimate payments to be made as instructed.

However, I've considered whether Zen should have done more to prevent Mr N from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transaction. For example, if it was particularly out of character.

So, I've gone onto consider, taking into account what Zen knew about the payments, at what point, if any, it ought to have identified that Mr N might be at a heightened risk of fraud that merited its intervention.

I note that this was a new account and Zen did not have a payment history to compare the payments to. But payment 1 was clearly cryptocurrency related and was large enough, in my view, to have prompted an intervention from Zen. Given this, I think that Zen should have really been aware that Mr N was at a heightened risk of financial harm. I think at this point Zen should have asked Mr N about the payments that he was making and provided a warning based on the answers that Mr N gave. It did not do this. However, that does not necessarily mean that Zen needs to refund Mr N the money that he lost. This is because I next need to consider what I think would have likely happened, had things gone as they should've and that Zen had intervened appropriately. Having carefully considered everything, I don't think it's likely that a proportionate intervention would have stopped the scam.

I say this because, the bank from which the payments originated, which I will call C, did intervene a number of times during the scam and, during phone calls with Mr N, questioned some of the payments that Mr N made.

I have listened to these calls between C and Mr N. It is clear from the tone of his conversations that Mr N was intent on making the payments and it does not sound as if he was concerned that he was sending his money to a scammer.

It is also clear that Mr N was providing answers that were not entirely accurate to C. I am not sure if this was at the prompting of the scammer, or that Mr N was worried that if he gave the correct answers to the questions being asked, the payments would be blocked. Either way, the answers that Mr N gave essentially stopped C from giving an appropriate warning or uncovering the scam.

For example, in one call, Mr N confirmed that he had not been approached about investments. This was not correct, as he had been approached by B. In several calls, Mr N was asked why he was sending funds to one of his other account providers. In these calls, he said repeatedly that he just wanted to "top-up" his other account. He also, in another call, was asked if the funds were going to remain in his account with the other provider or were they going to be sent on to a different account, for something like an investment. Mr N confirmed that the funds were going to remain in his account with the other provider.

Given these answers, had Zen intervened like C had, I can't see any reason why Mr N would've given any different answers than what he'd given to C. I think it more likely than not that Mr N would not have given accurate answers to questions asked, as he was clearly intent on making the payments regardless of what his account providers asked him. This means that, even if Zen has carried out appropriate interventions, I don't think that Zen could have uncovered or prevented the scam from occurring.

I've also thought about whether Zen could have done more to recover the funds after Mr N reported the fraud.

Zen are under no obligation to refund the money to Mr N under the Contingent Reimbursement Model (CRM) Code as they are not signatories of the code. I also don't think that it could have recovered the funds as they were forwarded onto a crypto wallet and my understanding is that they were then sent to other crypto wallets. Once funds are sent to a crypto wallet, I don't think there is any realistic chance of the funds being recovered.

I note Mr N's comments about the consumer duty. But this does not mean that Zen are obliged to refund all victims of scams in all scenarios. It is only required to refund someone when its actions or inactions caused a loss. But, for the reasons set out above, I don't think that Zen could have prevented Mr N's loss, due to the likely way he would have answered any questions asked about the payments. So in the circumstances, I don't think it would be reasonable to ask Zen to reimburse Mr N for the money he lost to the scam.

I note that Zen have offered £350 to reflect the way that it investigated this matter. Having carefully considered everything in relation to this complaint, I think that this is appropriate and I don't think it needs to do anything more.

I appreciate this will likely come as a disappointment to Mr N, and I'm sorry to hear he has been the victim of a scam. However, whilst I have a great deal of sympathy for the situation that Mr N found himself in, I'm not persuaded that Zen can fairly or reasonably be held liable for his loss in these circumstances.

Putting things right

To put things right, Zen needs to pay Mr N £350, if it has not already done so.

My final decision

My decision is that I partly uphold this complaint against UAB ZEN.COM, and require it to do what I have outlined above to put matters right for Mr N, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 6 May 2025.

Charlie Newton
Ombudsman