

The complaint

Mr L is unhappy that UAB ZEN.COM will not refund £11,778.71 he lost as the result of an authorised push payment (APP) scam.

Mr L has brought his complaint to this service through a representative. For ease I will refer solely to Mr L in this decision.

What happened

As both parties are familiar with the details of the scam, I will not repeat the details in full here. Mr L fell victim to a job/task scam. In summary, he was contacted by the scammer via WhatsApp and offered the opportunity to earn an income in exchange for completing tasks, subject to first depositing funds in the scammers' accounts. He opened an account at Zen on 19 July 2023 and made the following transfers to three other accounts at Zen:

Payment	date	value
1	20/07/2023	£2,628.71
2	01/08/2023	£3,030
3	01/08/2023	£45
4	01/08/2023	£3,000
5	01/08/2023	£30
6	01/08/2023	£45
7	01/08/2023	£3,000

When Mr L was unable to withdraw any of the money he had earned, or deposited, he realised he had been scammed. He recalls he reported this to Zen on 4 August 2023. Zen has no record of the scam being reported until it received Mr L's complaint on 18 October 2023.

Mr L says Zen did not do what it should have to protect him and prevent his losses. Zen says the transactions were made in line with Mr L's instructions and it would not be making a refund.

Our investigator upheld Mr L's complaint in part. He said Zen should have made a direct intervention at the time of payment 4, but that it should only refund 50% of Mr L's losses from that point onwards as Mr L could also have done more to prevent then scam.

Mr L accepted this assessment. Zen did not respond so the complaint was passed 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.

Having done so I have reached the same conclusion as the investigator. I'll explain why.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case as Zen is not a signatory.

There's no dispute that Mr L made and authorised the payments. Mr L knew who he was paying, and the reason why. At the stage he was making these payments, he believed he was depositing funds to allow him to generate income by completing tasks. I don't dispute Mr L was scammed and he wasn't making payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Zen, as it said, has an obligation to follow Mr L's instructions. So in the first instance Mr L is presumed liable for his loss. But there are other factors that must be considered.

Zen is an Electronic Money Institution (EMI) and at the time the payments took place it wasn't subject to all of the same rules, regulations and best practice that applied to banks and building societies. But it was subject to the Financial Conduct Authority's Principles for Businesses, including by this date the Consumer Duty, and BCOBS 2 and owed a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible.

In this case I think Zen needed to contact Mr L at the time of payment 4. Zen says Mr L would have seen a written warning telling him to make sure he knew the recipient and that the account number was correct when he moved money to a new Zen account for the first time – so payments 1, 2 and 7 here. And it declined five attempted payments Mr L made on 20 July 2023 as to they were cryptocurrency merchants were outside of its risk appetite. When Mr L transferred in £11,000 on 28 July 2023 it had queried the source of funds and the reason for the credit before releasing it to his account.

But when Mr L made payment 4 – taking the total he had paid to a new payee to over £6,000 in three separate payments within 70 minutes, I think Zen needed to speak to Mr L to understand the basic context of the activity as there was an unusual pattern emerging. Mr L had credited his account with £11,000 days before so why had he not made one payment to this new payee? As this is a pattern typical to scams Zen ought to have intervened prior to processing payment 4.

So what I need to decide, based on the available evidence, is what would most likely have happened, had Zen intervened with a proportionate level of questioning.

When the £11,000 credit came in Mr L told Zen the money was for an investment. It also knew he had recently tried to move money to a crypto exchange.

By August 2023, before processing payment 4, I would expect it to have asked a series of questions in order to establish the specific scam risk given many start with purchasing cryptocurrency, but are not actually investment scams. I have not seen any evidence Mr L had been given a cover story by the scammer and I have no reason to think he would not have taken Zen's intervention seriously. So had Zen asked a proportionate level of questions I think it would have most likely broken the spell of the scam and learnt Mr L was not making a legitimate investment. I say this as it would most likely have learnt Mr L had been contacted via WhatsApp, it was actually an income opportunity based on completing tasks not an investment, but he had no employment contract and was having to pay to earn – a

significant red flag. It follows I think an appropriate intervention from Zen would have prevented Mr L's losses from payment 4 onwards.

Should Mr L bear some responsibility for the overall loss?

I've considered carefully whether Mr L should hold some responsibility for his loss by way of contributory negligence. I think he should be held responsible in part. He had been contacted via WhatsApp. He was looking for work at the time so the scammer had a credible entry point. But to then go ahead with a 'job' with no contract of employment when upfront payments were required was high-risk and somewhat negligent. Legitimate income opportunities aren't found in this way. Overall, I'm not satisfied that it was reasonable for Mr L to proceed without further checks.

I am therefore instructing Zen to refund only 50% of Mr L's losses from payment 4 onwards.

Did Zen do what it should to try to recover Mr L's money?

In this case, Mr L sent the money to other accounts at Zen so it could have acted fast. Whilst Mr L recalls he contacted Zen on 4 August 2023 he was been unable to evidence this. Zen has no record of this contact – but it does of other correspondence at around this time. The available evidence shows it was 18 October 2023 when Zen was first made aware of Mr L's losses. By this time it had closed the scammers' accounts, with a nil balance, so there were no funds remaining to recover. It follows I do not find any failings on its part in this regard.

Putting things right

Zen must:

- Refund 50% of £6,075 (so £3,037.50); and
- Pay interest on the above amount at the rate of 8% simple per year from the date of each payment to the date of settlement.*

*If Zen considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr L how much it has taken off. It should also give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

I have found no grounds to make the additional compensatory award of £300 that Mr L asked for.

My final decision

I am upholding Mr L's complaint in part. UAB ZEN.COM must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 January 2025.

Rebecca Connelley
Ombudsman