

The complaint

Mr Y complains that AUB ZEN.COM (Zen) has not refunded money he lost to a scam.

Mr Y is represented in this complaint by a claims management company. For simplicity I will refer to Mr Y throughout this decision, even when referencing what his representatives have said on his behalf.

What happened

In August 2023 Mr Y opened an account with Zen from which he sent payments that he later said were part of an investment scam – an initial payment for €100, followed by a payment for €14,805, both on 29 August 2023 and both to purchase cryptocurrency which was then sent on to the scammer.

In November 2023 Mr Y – with the help of a representative – complained to Zen that it hadn't done enough to protect him from being scammed.

Zen looked into Mr Y's complaint and said that it did not consider it should be liable for Mr Y's loss. It said that it had provided Mr Y with a general warning about the risks of cryptocurrency, and that if it had intervened in the payment (which it nonetheless did not think it was obliged to do) it was likely Mr Y would not have shared the true reason for the payment he was making. So, Zen said that it wasn't going to refund Mr Y's loss, but it did offer to refund the processing fees associated with the scam payments.

Mr Y was unhappy with Zen's response and so complained to our service.

One of our investigators looked into Mr Y's complaint and said that they felt Zen should have intervened in the large payment Mr Y made to the scam, given its value and destination. However, our investigator didn't think it would have made a difference had Zen questioned Mr Y about this payment more, as the evidence showed he'd not been honest with another bank involved in the payment about the full circumstances of his cryptocurrency investment, nor had he taken on the warning given by that bank which included hallmarks of cryptocurrency scams that applied to his situation. So, they didn't recommend that the complaint be upheld.

Mr Y disagreed with the investigator's recommendations, saying that the intervention from the other bank had been poor, and that a good quality intervention would have stopped the scam. So, as no agreement could be reached, Mr Y's complaint has been passed to me for review.

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 satisfied Mr Y has been the victim of an investment scam, and I'm sorry he's had to go through this experience. But this complaint is against Zen, and not the scammer, so I can only consider Zen's actions in this decision.

In broad terms, the starting position at law is that an Electronic Money Institution (“EMI”) such as Zen is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer’s account.

It’s not in dispute here that Mr Y authorised the payments in question. So, while I recognise that he didn’t intend the money to go to scammers, the starting position in law is that Zen was obliged to follow Mr Y’s instruction and process the payments. Because of this, he is not automatically entitled to a refund.

But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I’ve also thought about whether Zen did enough to try to keep Mr Y’s account safe.

I’ve reviewed Mr Y’s statements, and I can see he opened the account only a few days before he made the payments towards the scam. Because of this, there was no genuine account activity that Zen could compare the scam payments to. And the initial payment Mr Y made was for a small amount – only €100 – so I don’t think it would be reasonable to expect Zen to have intervened in that payment in any way. But the second payment Mr Y made was significantly larger, at over €14,000, and given this high value, and that Zen were aware it was being used to purchase cryptocurrency (which Zen would have known, by that time, came with an increased risk of the payment being associated with a scam) I do think it would have been reasonable for Zen to take steps to intervene and to establish the circumstances surrounding this payment before allowing it to be made.

The question I must then consider is whether such intervention would have been likely to uncover the scam, and so prevent Mr Y’s loss from that payment.

Having thought very carefully about this, I think it is more likely than not that a reasonable intervention from Zen would not have prevented Mr Y from making this payment. I say this because I can see that Mr Y funded the scam payment with a payment into his Zen account for £13,000 from a bank account he held elsewhere – with a bank I will call C. And when Mr Y made that payment to Zen from C, C intervened and discussed the payment with him before allowing it to be made. I’ve listened to that call, and I can see that while Mr C was honest about some aspects of what he was doing – that he was making a payment to fund a cryptocurrency investment – he was not honest about some of the notable details of his situation. Specifically, he said that he had been introduced to the investment by someone he was very close to, that he hadn’t been promised any particular returns, and that he was moving funds to a crypto wallet that was entirely within his control. From what we now know, it appears this information was not correct. C also gave Mr Y a warning about cryptocurrency scams specifically, which included some hallmarks of scams that applied to his specific circumstances – such as finding the investment on social media, and being promised high returns.

I appreciate that Zen did not intervene in the payment, but the way Mr Y interacted with C leads me to believe that he would likely have continued to provide misleading information about how he had found the investment, and how much control he had over it, even if Zen had intervened. And with this in mind, and considering that Mr Y did not act on the relevant warning points regarding this kind of scam that C set out to him, I think it is unlikely that a proportionate intervention from Zen would have prevented him from making this payment.

I note what Mr Y has said about the messages he exchanged with Zen about the payment he made into his Zen account – which was stopped for some checks before it was cleared into the account. But given that, at that stage, Mr Y had not attempted to make any payments out of the account, I don't think it is fair to say that Zen should have intervened any more at that time.

I also understand that Mr Y was ultimately making payments into cryptocurrency wallets which the scammers controlled. I agree, therefore, that there was no prospect of Zen being able to help Mr Y recover his money as it would all have been long gone when he reported the fact that he'd been scammed.

I'm sorry to disappoint Mr Y, but with all this in mind, I don't think Zen could, in the circumstances, have prevented any of Mr Y's losses. I am therefore satisfied that it does not need to do any more than it has already offered to do to resolve this complaint. Zen should now refund the processing fees that it has offered to repay, if it has not already done so.

My final decision

I do not uphold this complaint. AUB ZEN.COM should now refund the fees it has offered to repay, if it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 13 March 2025.

Sophie Mitchell
Ombudsman