

The complaint

Ms Z complains that Skrill Limited won't refund the money she lost when she fell victim to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them all again here. Instead, I'll summarise the key points, and focus on giving reasons for my decision:

In early 2021, Ms Z was looking to invest. She spoke to an individual on a chat room app who she believed to be the vice-president of a big investment firm based abroad. As the app is audio-based, she says she checked his voice against his other social media profiles and found that it matched.

The individual guided Ms Z to start investing in cryptocurrency through a particular platform. The name and website changed several times, which Ms Z was told was due to improvements and updates as the customer base increased. She started with smaller investments and, when these performed well, invested more to get better returns.

Ms Z would move funds from her bank accounts to cryptocurrency wallets she had set up, to purchase cryptocurrency to send on to the platform. Some funds were also transferred to individuals, but again it seems this was done to purchase cryptocurrency to fund the trading.

After a year or so of trading, Ms Z set up an account with Skrill. This was tied to one of her existing cryptocurrency wallets, so she would use it to load funds there to be transferred on to the platform.

The investigator who looked into this complaint has shared a list of the relevant transactions with both parties, and Ms Z's representative has confirmed this to be correct. From her Skrill account, she sent around £225,000 to her cryptocurrency platform and received around £56,000 back – leaving her with a loss of almost £170,000.

Unfortunately, although the investment firm was real, it seems the individual who claimed to be their vice president was a fraudster. Ms Z's funds weren't actually being invested. She had been able to make some withdrawals initially. But when she attempted to make a significant withdrawal (for £250,000), she was asked for a 20% withdrawal fee and her account was frozen. She then realised it was a scam.

Supported by a professional representative, Ms Z complained to Skrill that it had failed to protect her. She said the payments she made were highly suspicious, yet it didn't question her about them. And if it had done so, the fraud would have been prevented.

Skrill didn't agree with Ms Z's complaint. It said the funds were loaded to her own cryptocurrency account. And she then sent the cryptocurrency she legitimately bought through that wallet to the scammer. In the circumstances, it said it wasn't liable for her loss.

Unhappy with this response, Ms Z referred her complaint to our service. An investigator looked into it, but didn't uphold it. He thought there was a case to be made for expecting Skrill to have questioned Ms Z about her first payment, given the size. But he wasn't persuaded that would have uncovered, and prevented, the scam.

This was mainly due to the fact Ms Z wasn't honest when questioned by her bank about various scam payments. And because there wasn't any public information from the time suggesting the individual or platform(s) involved were fraudulent. The investigator therefore wasn't persuaded that Ms Z would have been upfront with Skrill about the circumstances of the payment. Nor did he think a general warning would have had much impact.

Ms Z has appealed the investigator's outcome. Her representative says she hadn't been coached on what to say if questioned by Skrill, so disputes that she would have been dishonest. It also says the cover stories she told the bank wouldn't have made sense given the nature of these payments. So Skrill should have identified the risk and warned her. If it had done so, it says she would have spoken to her son – who would have realised she was being scammed.

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 agree with the conclusions reached by the investigator for these reasons:

In line with the Payment Services Regulations 2017, Skrill is expected to execute authorised payment instructions without undue delay. It is agreed that Ms Z authorised these disputed transactions. She transferred the funds from Skrill to her own cryptocurrency account, before subsequently transferring them on to the scammers. So the starting position is that she, rather than Skrill, is liable for the loss resulting from these payments.

However, there are circumstances when it might be appropriate for Skrill, as an electronic money institute (EMI), to identify a fraud risk and to therefore take additional steps before processing a payment. Such as when the payment is significantly unusual or uncharacteristic when compared to the normal use of the account.

As this was a new account, the payments didn't look *uncharacteristic* – as Skrill didn't have prior knowledge of how Ms Z normally transacted. I'm also conscious that the particular type of account she had opened with Skrill was specifically intended for making payments to the legitimate cryptocurrency provider who Ms Z already held an account with. So in that sense, the account activity was in line with what Skrill would have been expecting.

That said, I do agree with our investigator that the payments were considerably large. The first payment sent to the cryptocurrency wallet was around £36,000. I think the size of the payment arguably ought to have prompted some further checks by Skrill, to ensure it was meeting its requirements including monitoring for signs of fraud.

I understand Skrill didn't place any blocks on the account or otherwise intervene with the payments. It simply processed them in line with the authorised payments instructions it received. But the fact it didn't perform further checks, such as questioning Ms Z about what she was doing, isn't by itself sufficient to support that it should refund her. I need to consider whether this had a material impact on her loss.

I've considered this point carefully. I'm mindful Ms Z has lost out here at the hands of a cruel and sophisticated scam. And she was sending large amounts via her Skrill account. But overall, I'm not persuaded appropriate intervention by Skrill was likely to have prevented further fraudulent losses.

I'm aware, and consider it relevant, that Ms Z's bank intervened on several occasions when she was making payments intended to be loaded to the scam platform. And she repeatedly did not disclose the real reason for the payments. On several occasions, she gave a cover story indicating that the payments were being used to buy furniture and/or were related to renovations.

I appreciate that cover story would not have made sense if given in relation to these payments; Skrill would have known they were for cryptocurrency. But it's still significant that, when questioned, Ms Z wasn't honest about how the money was being used. I think that suggests she wasn't likely to have been honest to Skrill either, even if she wouldn't have used the exact same cover story.

Although Ms Z's representative says she wasn't given a cover story for the Skrill payments, she could still have contacted the scammer for advice on what to say if it had questioned her. I'm minded to think that's what she would have done, given the records she has shown us of her contact with the scammer. As these show she asked them about what to say if her bank questioned her.

I also consider it relevant that, although Ms Z's initial cover story to her bank was mainly relating to her buying furniture, she did eventually admit the money was being used for investing. But that was only after intervention in branch. As Skrill isn't a bank and doesn't have branches, it didn't have the same opportunity to speak to Ms Z face-to-face, away from any contact with the scammer to guide her on what to say, to uncover the truth.

Furthermore, even when it came to light that some payments were for investing, Ms Z told her bank she had been mistaken before as it was her husband making the payments. And while she had thought they were all to buy furniture, some were actually for investing. She said her husband was very experienced and had been investing for years. She confirmed to the bank that she was being honest with them about this explanation and hadn't been told how to answer its questions, nor had she been directed to mislead it in any way.

In fact, the records I've seen show Ms Z had been guided by the scammer on what to tell the bank. They had directed her to mislead them about the payments. She wasn't upfront about this with her bank, so I don't think she would have told Skrill either. And that would have affected Skrill's ability to accurately assess the fraud risk, and to take further action as appropriate.

There was also an occasion earlier on when Ms Z went to her branch about a (relatively smaller) payment that went directly to a cryptocurrency account. On that occasion, Ms Z confirmed she hadn't been coerced, had done adequate research and hadn't been convinced to make the payment. This gives some insight into what she might have told Skrill if it had questioned her.

Overall, by the time of these payments, I think Ms Z was strongly under the spell of the scam. It had been ongoing for a year and she had paid in a substantial amount. Her previous interactions when making payments suggest she wouldn't have been upfront about what she was doing, which would have hampered Skrill's ability to identify, and protect her from, the fraud risk. All of this makes me think it's unlikely appropriate intervention by Skrill would have stopped her from making these payments.

As Ms Z's representative has pointed out, Skrill was (or ought to have been) familiar with the common indications of cryptocurrency scams. But it's not clear it would have been given cause to issue a scam warning– as it's not clear she would have divulged that she was planning to move the funds on from the legitimate merchant she was paying. Nor am I persuaded that a tailored warning about cryptocurrency scams would have struck Ms Z as particularly concerning by this point.

The scam didn't meet some of the more common features, such as use of remote access software. While she had come across the opportunity via social media, she had taken further steps to corroborate the individual – such as comparing with other social media profiles dating back over eight years.

Having looked up the names and websites Ms Z says she was given, I have found there wasn't publicly available information at the time to suggest they might be a scam. While her representative has pointed out that the companies weren't regulated, as it will know, that isn't a requirement for cryptocurrency. So that in itself was unlikely to have caused Ms Z – or Skrill, if mentioned – concern.

I'm mindful that, while using the Skrill account to make these payments, Ms Z also was able to receive over £56,000 back from the platform she paid directly – as well as having received prior credits into her bank accounts. She has confirmed that she was, on occasion, able to make withdrawals from the scam.

While it's not uncommon to see scammers allow small withdrawals to persuade customers of their legitimacy and therefore induce them to invest more, the amount she received back here is more substantial. Although I appreciate it was much less than the total she paid into the scam overall, it was still a lot more than you typically see being withdrawn. I think that would have offered further reassurance about the legitimacy of the investment.

Ms Z's representative says that, if Skrill had issued a warning, she would have checked with her son, and he would have realised it was a scam. But I consider that too speculative to be a sound basis for me upholding this complaint. Particularly because, as I've explained, I don't think a warning would have made Ms Z particularly concerned about the legitimacy of what she believed was a long-running and profitable investment.

The funds Ms Z paid from her Skrill account were loaded to her own cryptocurrency wallet. At that point they were still in her control; it was only after she loaded the funds onto the alleged investment platform that it was actually lost to her. Given the payment steps involved, Skrill wasn't able to help Ms Z recover the funds once she reported the scam. As the money had already been transferred on.

I appreciate how disappointing this will be for Ms Z, who has lost out to a cruel and sophisticated scam. However, I'm not persuaded any errors by Skrill had a material impact on her loss. So I don't consider it fair to direct it to refund her or otherwise compensate her.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Z to accept or reject my decision before 4 September 2023.

Rachel Loughlin
Ombudsman