

The complaint

Mr B complains that Gemini Payments UK, Ltd won't refund money he lost as a result of a scam.

What happened

Mr B fell victim to an investment scam. As part of the scam he was directed to open an account with Gemini. When he did so, he actually entered into an agreement with two different businesses: Gemini Europe Ltd (now called Gemini Payments UK, Ltd) a Financial Conduct Authority ("FCA") authorised Electronic Money Institution (I'll refer to this business as – "GPUK") and Gemini Europe Services Limited (now called Gemini Intergalactic UK, Ltd) a provider of unregulated cryptocurrency services (I'll refer to this business as – "GIUK").

He transferred money from his account at a bank that I'll call S, to his GPUK account. The payments he made were for the amounts of £50 and £3,581 and both took place on 26 July 2021. He used those funds to purchase cryptocurrency from GIUK before sending that cryptocurrency to a fraudster. He also purchased cryptocurrency from a second firm, but those transactions do not form part of this complaint.

He reported the matter to Gemini and S. Both declined his claim for reimbursement. He referred both complaints to our service. One of our Investigators looked into his complaint about Gemini. In the Investigator's view, much of Mr B's complaint related to the provision of cryptocurrency services (which were provided by GIUK), rather than the electronic money services (which were provided by GPUK). GIUK isn't a business that falls under our jurisdiction and, as our Investigator explained, the cryptocurrency activities it provides aren't activities regulated by the Financial Conduct Authority, so, for both reasons, we can't consider complaints about it.

Mr B accepted that our service couldn't consider the aspects of his complaint that related to cryptocurrency activities, but still questioned whether GPUK had done enough to prevent the scam. He argued it failed in its obligations in relation to anti-money laundering, 'Know Your Customer' checks and suspicious activity monitoring.

As Mr B didn't agree, the case was passed to me for 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.

Mr B appears to have accepted that our service can't consider the parts of his complaint that relate to cryptocurrency activities. So I've considered only the parts of the complaint that relate to the electronic money activities carried out by GPUK.

In law, Mr B is generally responsible for payments he's made or consented to himself. While I understand the fraudsters may have guided him through the process of purchasing cryptocurrency, there doesn't seem to be any dispute that he knew about and consented to

that taking place. But I've thought about whether, as a matter of good practice, GPUK should have taken additional steps or made additional checks before allowing Mr B to transact on his account. I've also considered whether GPUK met its regulatory obligations in relation to anti-money laundering.

I'm sorry to disappoint Mr B, but I can't say that GPUK made an error here. Mr B deposited just two payments into his GPUK account, before purchasing cryptocurrency from GIUK. I don't think the amounts of those payments or their frequency or nature would have caused any concern to GPUK, particularly given that Mr B's GPUK account only had one purpose – to receive funds for, and to withdraw money from, the linked GIUK account. I don't think the purchase of cryptocurrency that Mr B undertook should have stood out as being unusual or concerning or alerted its transaction monitoring systems.

Mr B argues that GPUK failed in its anti-money laundering and 'Know Your Customer' obligations and those failings caused his loss. I disagree. GPUK would have had no reason to be concerned about the source of his funds or his identity. And, those obligations don't require, in every case, GPUK to undertake detailed enquiries of its customer in order to understand the wider circumstances surrounding the opening of the account and every payment. I think, given the likely sophisticated and involved nature of the scam, only those fairly detailed enquiries could have brought it to light. I'd only expect GPUK to make such enquiries where it reasonably had concerns that its account holder was at heightened risk of financial harm from fraud. And, for the reasons I've explained, I don't think that was the case here.

Finally, as the funds were converted into cryptocurrency and sent to the fraudster, I can't see that GPUK would have been able to recover his money.

I'm sorry that Mr B has lost out as a result of a cruel scam, but I can't hold GPUK responsible for his loss.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 December 2023.

Rich Drury
Ombudsman