

The complaint

Mr H complains that Spectrum Payment Services Limited trading as Acorn Account (Acorn), didn't do enough to prevent the loss he suffered when he was the victim of a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In 2021 and 2022 Mr H says he was the victim of an investment scam. He says he was dealing with a company 'A' that he believed to be offering genuine investments but who actually turned out to be a scam.

The report he made to Action fraud shows that he made a series of payments and states that he lost around \$128,000. One of the payments that Mr H says he made towards the scam was for \$7,728.76 in July 2021. This payment was received in an account held with Acorn.

Mr H complained to Acorn, he believes they have failed with regard to various obligations and wants to be reimbursed. The matter was ultimately referred to our service and one of our Investigators didn't recommend that the complaint should be upheld. In summary she didn't think Acorn had failed or that they needed to reimburse Mr H. Mr H disagreed and asked for an Ombudsman to review his complaint.

In December 2023 I issued a provisional decision in which I said:

"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've reached the same outcome as our Investigator. But as my reasons are different, I'm issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision.

It would only be fair and reasonable for me to direct Acorn to make a payment to Mr H if I'm satisfied that they are responsible for errors which caused his loss (or a part of it). It isn't enough for there to have just been an error, it would also require that the error could fairly be said to have caused the loss.

The evidence Mr H has provided is that he made several payments over a period of months to the same scam. These payments were paid into various different accounts and took place both before and after the payment that went to the Acorn account. So, even if there were failures by Acorn when opening the account, in their monitoring of the account prior to the arrival of Mr H's funds, or in responding to any prior notification of fraud, I don't think this would have made a difference to the loss Mr H suffered. For clarity I'm not making a finding that there was an error, and I don't need to to fairly decide this complaint. Because even if there were such an error and Acorn should have closed the account and didn't (or never ought to have opened it), I don't think this would have prevented the loss. It's most likely that the scammers would have simply directed Mr H to make his payment into one of the other

accounts they were in control of.

But I have considered Acorn's actions when the funds credited the account. Before releasing the funds, Acorn asked their accountholder for evidence of entitlement to those funds. I've seen the document provided which recorded that the payment was in lieu of an invoice that it indicated had been sent to Mr H. It showed that the payment was due by 31 July 2021 and it was for an equivalent amount (taking account of currency exchange rates at the time). The document also records that the payment was for a consultancy fee and a deposit. I think it was reasonable for Acorn to accept this prior to crediting the funds to the account.

Mr H's funds show as crediting the account on 2 August 2021 and these are then spent across the next 48 hours. Given the type of account that received the funds along with its expected and intended use, there was nothing unusual or suspicious about the way in which the funds left the account. I don't think Acorn ought to have done more before processing the payments so I can't fairly conclude they should've prevented Mr H's loss in this way. And as such, when the matter was reported to Acorn, Mr H's money was already gone from the account. So I can't say anything Acorn did or didn't do in relation to their recovery efforts would have made a difference.

I'm sorry to hear Mr H has lost money to a scam, but as I don't think this is something Acorn are responsible for, I'm not intending to direct that they need to do more to resolve this complaint."

Acorn responded and said they had nothing further to add. Mr H responded with some further comments which I'll address below.

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 H says that my finding that even if there were failings by Acorn, that he most likely would have been directed by the scammer to pay other accounts is speculation lacking any proof or argument. I don't agree that is the case. The evidence shows that Mr H made payments as a result of the same scam to multiple other accounts both before and after his payment to the Acorn account. The loss arising from this payment is only a small percentage of what Mr H lost overall. So I maintain that even if there were failures by Acorn prior to the arrival of Mr H's payment, this can't fairly be said to have caused his loss. And as such it wouldn't be fair and reasonable for me to make an award on that basis. I won't individually address any of the further points Mr H has re-iterated about KYC and other failures prior to his payment for the reasons I've stated.

Mr H has also highlighted the difference between the invoice he received for his payment, and what he says was an obviously fake invoice provided to Acorn by the accountholder. I've seen the invoice provided to Acorn and in hindsight we now know it was fraudulent. But there was nothing about the document (at the time) that ought to have reasonably led Acorn to that conclusion. So I don't think it was unreasonable for them to accept it before placing the funds onto the account.

Mr H has also suggested that what he says were failures in the KYC process have resulted in a failed police investigation. I've considered this but I'm not persuaded that is the case. Whilst I accept Mr H has provided evidence which supports that the police told him identification documents weren't taken at account opening, this in itself doesn't mean I think it would be fair and reasonable to direct Acorn to refund his loss. The evidence from the

police includes *“there are no further lines of enquiry within the UK that can be pursued. I am almost certain that the main offenders wouldn’t have been in the UK in the first place. Scams like this are usually run from abroad... Sadly, these frauds are elaborate and are designed as such in order to avoid prosecution.”* So based on this, on balance, I’m not persuaded that but for any alleged failure at account opening, there would have been a successful prosecution which would have resulted in Mr H’s loss being prevented. The evidence from the police is clear that this sadly wasn’t a likely outcome.

I can appreciate Mr H’s strength of feeling and why he wants to do all he can to recover his loss. But my role requires that I remain impartial, and having carefully reviewed all the further submissions, I’m not persuaded to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 8 February 2024.

Richard Annandale
Ombudsman