

The complaint

Mr D is unhappy that the London Community Credit Union Limited (LCCU) will not refund the money he lost as the result of a scam.

Mr D has used a representative to bring his complaint to this service. For ease, I will refer solely to Mr D throughout this decision.

What happened

Both parties are familiar with the details of the scam, so I will provide only a summary here. Mr D met a person on social media website who I will call B. After a short period of time, B started mentioning that she worked in finance and made money trading crypto. Mr D was persuaded to make the following payments to Binance - a crypto exchange. We do not know if they were card payments or transfers. The funds were then sent on to scammers.

Transaction Number	Date	Payee	Amount
1	24/10/2022	Binance	£200
2	24/10/2022	Binance	£500
3	24/10/2022	Binance	£500
4	25/10/2022	Binance	£300
5	25/10/2022	Binance	£700
6	26/10/2022	Binance	£1,000
7	26/10/2022	Binance	£2,000
8	27/10/2022	Binance	£1,000
9	27/10/2022	Binance	£1,000
10	28/10/2022	Binance	£1,000
11	25/11/2022	Binance	£450
12	26/11/2022	Binance	£50
13	29/11/2022	Binance	£750
14	30/11/2022	Binance	£20
15	01/12/2022	Binance	£15
16	02/12/2022	Binance	£15
17	04/12/2022	Binance	£42
18	04/12/2022	Binance	£50

Mr D attempted to withdraw the “profits” that he made with B but he was told that he would have to pay further fees. After some back and forth with B Mr D realised that he had been scammed.

I issued a provisional decision on 30 November 2023 in which I said something similar to the following;

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.”

There's no dispute that Mr D made and authorised the payments. Mr D knew who he was paying, and the reason why. At the stage he was making these payments, he believed he was transferring funds to invest in cryptocurrency.

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

- 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.*
- LCCU also has an ongoing obligation to be alert to various risks in relation to accounts with it. Specifically, I'm mindful that it: must conduct its "business with due skill, care and diligence" (FCA Principle for Businesses 2);*
- has a longstanding regulatory duty "to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime" (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001);*
- must fairly and reasonably monitor accounts and any payments made or received, to counter various risks including anti-money laundering and preventing fraud and scams. At the material time, those requirements included maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage risk, e.g. through customer due-diligence measures and the ongoing monitoring of the business relationship, including through the scrutiny of transactions undertaken throughout the course of the relationship;*
- must have systems in place to look out for unusual transactions or other signs that might indicate risk of fraud (among other things). This is particularly so, given the increase in sophisticated fraud and scams in recent years.*

With this in mind, I currently think LCCU should be liable for payments 7 to 18. I'll explain why

Payments 1 to 6

Financial institutions such as LCCU have obligations to be alert to fraud and scams and to act in their customers' best interests. But they can't reasonably be involved in every transaction. I don't think it was unreasonable for LCCU to process these payments given their value even though they were larger than the payments Mr D usually made. I note that the number of transactions over a short time to a crypto exchange would sometimes have been enough on their own to have prompted questions regardless of their size, but in this instance, on balance, I think that it was okay for LCCU not to have questioned them.

Payment 7

I think LCCU ought to have carried out further checks and spoken to Mr D before processing this transaction. It was double the amount of payment 6, and was made on the same day as payment six. By this point over £5,000 was sent to a new payee over multiple transactions to a crypto exchange. This pattern, alongside the increasing size of the transactions, has the hallmarks of a crypto scam. Customers often move money onto a crypto account in their own name, before moving it on again to scammers; and that scams like this commonly take place with multiple payments, starting at a low value.

I also appreciate that Mr D's loss didn't materialise directly from his LCCU account in these circumstances. But even though he was sending funds to a crypto account in his own name, I still think that LCCU ought to have taken a closer look at payment 7 – given the significant risk of fraud associated with cryptocurrency investments at the time.

The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. And by January 2019, cryptocurrency scams continued to increase in frequency. So, by the time Mr D started making his investments in October 2022, it is reasonable to say LCCU ought to have had a good enough understanding of how crypto scams works – including the fact that their customer often moves money to an account in their own name before moving it on again to the fraudster.

Therefore, I'm satisfied that LCCU should've had mechanisms in place to detect and prevent this type of fraud at the time Mr D was making this payment, and that it should have led to it intervening to ask further questions about payment 7.

I would expect LCCU to have intervened and asked Mr D who the payment was for, what it was for, and for the basic surrounding context of the payment - it could, for example have, asked how he had been contacted, whether he'd parted with personal details in order to open a trading account, whether he was being helped by any third parties e.g. a broker, and how he had come across the investment, which in this case was via social media.

I have no reason to believe Mr D wouldn't have been open with LCCU, and I think he would have taken its intervention seriously. So I think LCCU would have quickly learned from its conversation with Mr D the basic background to the payment instruction – that he was buying cryptocurrency, to send onto what he thought was a cryptocurrency type trading investment which he'd decided to pursue after learning about it via social media.

Even though the conversation would have identified the payment was going to Mr D's own cryptocurrency account (before being sent onto the scammers), the conversation shouldn't have stopped there on the basis that the money appeared to be going to somewhere safe and within Mr D's control. This is because by 2022 LCCU knew – or ought to have been well aware – how scams like this work – including that the customer often moves money onto an account in their own name, before moving it on again to scammers.

So, I think LCCU would have been concerned by what the conversation would most likely have revealed and so warned Mr D, explaining the typical characteristics of scams like this. Had it done so, I think Mr D would have listened and recognised he was at risk. I am satisfied he would have had second thoughts if LCCU had intervened effectively. It follows that I think Mr D would not have gone ahead with payment 7, nor any subsequent payments had LCCU taken reasonable steps to intervene and check that the payments were not being made as part of a fraud or scam.

I've considered carefully whether Mr D should hold some responsibility for his loss, by way of contributory negligence. In this instance Mr D's representative has explained that Mr D had done some research on B. But the reviews that it provided as part of its submissions all seem to be negative – which should've put Mr D on notice that B may not be legitimate, or at the very least, ought to have made him question whether it was wise to keep sending large sums of money to B. I have searched for reviews for B but can't find much about it. So I am unsure on how much research Mr D had actually done.

So overall and having considered everything, I think that Mr D contributed to his own loss. So I currently feel that it would be appropriate to reduce the amount of compensation due to Mr D by 50%.

I have considered whether LCCU could have recovered the funds in question but given the funds went to a Binance account in his own name, a chargeback would not have been successful and I don't think that there was any other way of it recovering the funds either.

Putting things right

Currently I think that it is fair that LCCU:

- *Refund 50% of transactions 7 to 18*
- *Pay 8% simple interest, per year, on these transactions from the date of each transaction to the date of settlement, less any appropriate tax"*
-

Mr D agreed with my provisional decision LCCU did not respond by the deadline provided,

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.

As neither party has raised any new points I see no reason to change the outcome that I proposed in my provisional decision.

So in summary I think that LCCU should have intervened during transaction 7 and had it done so the scam would have been stopped. So I think that LCCU should refund transaction 7 onwards and there should be a 50% deduction in the refund as I think Mr D contributed to this own loss.

So for the reasons set out above I uphold this complaint in part.

Putting things right

LCCU should do the following:

- Refund 50% of transactions 7 to 18
- Pay 8% simple interest, per year, on these transactions from the date of each transaction to the date of settlement, less any appropriate tax

My final decision

My decision is that I uphold this complaint in part and London Community Credit Union Limited should pay the redress outlined above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 January 2024.

Charlie Newton
Ombudsman