

The complaint

Mr K has complained that Clydesdale Bank Plc (Clydesdale) has refused to refund him the money he lost as a result of falling victim to a scam.

Mr K is being represented by a third party. To keep things simple, I will refer to Mr K throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr K had started to make investments when he came across a business called Z Cash (X). Mr K did some online research about Z Cash and could see it got mixed reviews and a rating of 3.5 out of 5.

Having discussed an investment with X Mr K started sending money to it via a legitimate cryptocurrency exchange. Mr K started with a test payment of £10 before sending much larger sums.

Mr K made the following payments to X via the cryptocurrency exchange:

| Date | Payee | Amount | Payment Method |
|------------------|-------|---------|----------------|
| 24 February 2021 | Luno | £10 | Transfer |
| 1 March 2021 | Luno | £13,500 | Transfer |
| 2 March 2021 | Luno | £16,000 | Transfer |

Mr K has been trying to recover his money ever since without success.

Our Investigator considered Mr K's complaint but didn't think it should be upheld. Mr K disagreed, so this complaint has been passed to me to decide.

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.

It has not been disputed that Mr K has fallen victim to a cruel scam. The evidence provided by both Mr K and Clydesdale sets out what happened. What is in dispute is whether Clydesdale should refund the money Mr K lost due to the scam.

Recovering the payments Mr K made

At the time the scam took place Clydesdale was not signed up to the Contingent Reimbursement Model (CRM) so it's not possible for Mr K to gain a refund of the money he lost through the CRM.

In any event the CRM does not cover payments that have been made to and from accounts

in the same name as the customer.

As Mr K had moved his funds from his Luno account to X I am satisfied Clydesdale has no options available to it to recover the payments Mr K had sent.

Should Clydesdale have prevented the payments Mr K made?

Mr K has accepted he authorised the payments he made from his account with Clydesdale, so the starting point here is that Mr K is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Clydesdale should have stepped in when Mr K was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

Before Mr K made the first payment to Luno on 24 February 2021 he had a telephone call with Clydesdale. Clydesdale has provided a recording of this conversation which I have listened to, to help me decide this complaint.

Clydesdale explained it was calling from the fraud department for a check on Mr K's internet banking as payments had been flagged for a security check.

Clydesdale told Mr K that he should get independent financial advice before investing and that he should check the FCA register as they see a lot of fraud and scams to cryptocurrency, and that they aren't always able to get the funds returned.

I have thought about the information given to Mr K in this call and I think it would have been reasonable for Mr K to have considered Clydesdale's advice before proceeding with further payments. Clydesdale had made it clear that crypto payments are often fraud related and checks should be carried out before making any payments.

Despite the information Mr K received in the above call he continued to make the three payments into the scam. Mr K even called Clydesdale before making the payment on 1 March 2021 to explain he was making a payment and he didn't want it to be stopped.

Considering the above it's clear that despite the warning given to him by Clydesdale that the payments could be scam related, Mr K still wanted to proceed with them. I don't think repeating the same scam advice would have changed Mr K's mind in making the payments and therefore I don't think Clydesdale missed an opportunity to prevent the scam from taking place. So, Clydesdale is not responsible for Mr K's loss.

Mr K has told us he was vulnerable at the time the payments were made due to a health condition. But I haven't seen enough to say Mr K was unable to make daily decisions. So, this doesn't change my decision.

I understand Clydesdale has refunded some of the money Mr K lost in relation to this scam. I think this is reasonable and I won't be asking Clydesdale to make any further payments to Mr K.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 25 August 2023.

Terry Woodham
Ombudsman