

The complaint

Mr and Mrs S complain that Coutts & Company (Coutts) won't refund the money they lost as a result of an investment scam. They're also unhappy about the customer service they then received.

They're being supported by a representative. To keep things simple, I'll refer to Mr S in this decision as he was the one involved with making the payments and later correspondence.

What happened

The background to this complaint is known to both parties, so I won't repeat all the details here.

In summary, Mr S says he came across a 'broker' named Tradelax ("the scammer") in early October 2020 through a social media advert, which was seemingly endorsed by a celebrity, promoting crypto-currency trading. He filled in an online form, paid an initial deposit, and was contacted by one of their representatives who said they'd be handling his trades.

An ID verification process was completed and, as part of his due diligence checks, Mr S says he was given correspondence and explanations by someone claiming to be a director at Tradelax on how the trading would work – all of which added to the legitimacy of the investment. An initial credit card payment of £1,000 was made in early October 2020, but he started to invest more heavily as the scam went on, signing up to membership levels which required more investment, and then to what he genuinely believed would entitle him to 'trading bonuses' on the understanding the funds were to be locked-in until January 2021.

A series of international payments were sent between October and December 2020, through different beneficiaries, to Mr S's crypto wallets and on to the scammer. I've listed below the transactions I've considered as part of this complaint (as shown on the statements) and I've used the GBP amounts (all payments were sent in Euros). I understand some of the money was 'invested' on behalf of a friend and Mr S received a credit of £2,000 from the scammer on 21 October 2020 (paid to his account with another bank), again adding to the legitimacy of the investment.

	Date	Beneficiary	Transaction type	Amount (£)
1	23-Oct-20	Blue Data OU	SEPA payment (Tel)	£24,539.49
2	23-Oct-20	Blue Data OU	SWIFT (Tel)	£24,594.13
3	23-Oct-20	Blue Data OU	SWIFT (Tel)	£24,580.68
4	27-Oct-20	Current Account	Payment 2 returned	£24,164.87
5	28-Oct-20	Current Account	Payment 3 returned	£24,128.04
6	29-Oct-20	Blue Data OU	SEPA payment (Tel)	£24,613.56
7	29-Oct-20	Blue Data OU	SEPA payment (Tel)	£24,588.82
8	02-Nov-20	Blue Data OU	SEPA payment (Tel)	£50,444.11
9	03-Nov-20	Blue Data OU	SEPA payment (Tel)	£98,217.53
10	04-Nov-20	Blue Data OU	SEPA payment (Tel)	£118,208.29

11	05-Nov-20	Blue Data OU	SEPA payment (Tel)	£96,173.82
12	05-Nov-20	Blue Data OU	SEPA payment (Tel)	£39,966.84
13	06-Nov-20	Blue Data OU	SEPA payment (Tel)	£113,478.62
14	10-Nov-20	Blue Data OU	SEPA payment (Tel)	£125,534.03
15	10-Nov-20	Blue Data OU	SEPA payment (Tel)	£10,014.61
16	11-Nov-20	Blue Data OU	SEPA payment (Tel)	£125,493.98
17	12-Nov-20	Blue Data OU	SEPA payment (Tel)	£49,706.01
18	17-Nov-20	Blue Data OU	SEPA payment (Tel)	£100,575.85
19	18-Nov-20	Blue Data OU	SEPA payment (Tel)	£99,635.63
20	01-Dec-20	Lipan Services OU	SEPA payment (Tel)	£50,258.41
21	02-Dec-20	Lipan Services OU	SEPA payment (Tel)	£49,668.60

Mr S says he realised he'd been scammed in early December 2020 when he could see the 'balance' showing on the scammer's platform had fallen from £12 million to £7 million and then rapidly to zero. A complaint was raised about Coutts' failure to prevent the scam and referred to the Financial Ombudsman in May 2021.

Our Investigator reviewed it and didn't uphold it. In summary, he concluded Coutts should have done more to intervene and warn Mr S of the possibility he was being scammed. But he thought it was unlikely, taking into account the conversations Mr S had with Coutts in November 2020, that an earlier intervention would have stopped him making his payments. He did, however, recommend an award of £100 for the upset Mr S was caused by the language Coutts had used when discussing his situation internally.

Coutts accepted that outcome. Mr S did not. As the matter couldn't be resolved informally, it's 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.

Having done so, I've decided to uphold it for broadly the same reasons as our Investigator and I've commented only on the issues I consider material to the outcome.

Authorisation

It's not in dispute Mr S was scammed and I'm sorry about the impact the whole experience has had on him. It's also not in dispute that he authorised the payments from his accounts. So, although he didn't intend the money to go to the scammer, under the Payment Services Regulations 2017, Mr S is presumed liable for the losses in the first instance. And, as the Supreme Court reiterated in *Philipp v Barclays Bank UK Plc*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

Prevention

We do, however, expect banks to have systems in place to monitor transactions and to pick up on any that appear out of character or suspicious – and, in some circumstances, when an identifiable fraud risk is present, it would be appropriate for a bank to take additional steps and make further enquiries before processing a payment.

With this in mind, and looking at Mr S's accounts, there was nothing particularly suspicious about the initial credit card payment in early October 2020 (which I understand has since been refunded) that should have triggered Coutts' fraud detection systems. But I think there did come a point (arguably from 23 October 2020 and certainly by November 2020) where the payment activity on the current account became significantly unusual in comparison to the previous spending, such that Coutts should fairly and reasonably have stepped in to protect Mr S from a heightened risk of fraud, by asking him probing questions about the nature of the transactions.

I don't consider the checks carried out when Mr S set up a new payee were proportionate in the circumstances, given also the amounts and payment types involved. And although the losses happened from Mr S's crypto wallets (over which he had control), it's also necessary to keep in mind that, by the time he started his payments, Coutts ought to have had a good understanding of how these scams take place, including the potential of 'multi-stage' fraud where money is first moved through one or more accounts in the customer's name before being forwarded to the scammer.

Causation

That said, even accepting the spending ought to have appeared unusual to the extent that Coutts should have intervened, I'm also required to assess whether such an intervention would have likely prevented the losses – and, on balance, I'm not convinced it would have.

In particular, I think the calls Mr S had with Coutts in November 2020 and his subsequent actions, are a relevant consideration here when thinking about the actions he'd have likely taken if Coutts had intervened and made sufficient further enquiries about the payments.

- The first call began with Mr S saying he's calling because he's concerned he *"might be subject of a scam"*. He went on to say he'd been making payments since October 2020 and the person he'd been dealing with had been uncharacteristically unresponsive to recent calls and emails. He'd also seen reviews pop up *"saying that it could be a scam"*.
- In a follow up call with a member of the fraud team, Mr S was asked to talk more about what had happened. He explained the circumstances of his payments and that, while the scammer had been in touch (since the first call), he was still *"highly nervous but clearly not as it was specifically last night in theory"*. In response to the question about what due diligence he'd carried out into the broker to begin with or whether he'd taken any advice, he said he did what he could.
- He later added: *"the reason for ringing you last night and trying to do something about this £100,000 I sent yesterday is if they [the scammer] hadn't rang me this morning and this had all disappeared then I wouldn't want to add insult to injury by them getting another £100,000...closing the door a little bit after the horse has bolted...but at least trying to secure the return of a further £100,000 would have been something..."*
- And then: *"I'm a sort of realist in the sense that I am where I am... it's no good anybody sitting down and saying to me did you not realise this that and the other, because you know, yes I thought I did, I knew it was unregulated, I had as many phone calls and did as much as I could, I decided to take the risk, the upside was big, the downside is manageable..."*
- Towards the end: *"So just to put into perspective, I'm now in a situation of somewhat of a dilemma in the sense of, I'm sort of am where I am...I've invested the money, am I going to get it back? I don't know, the amount of profit it's making is considerable right now, so on the upside it would be massive, on the downside I could live with it, and yes, you're right, under no circumstances will I be sending or investing any more money until I get an*

actual... (inaudible)... or my money back that's for sure".

- The member: *"cut off now and just see where you are with things...because you could be just, as you said, putting more money into it and then nothing further will come back".*

I note Mr S says his comments have been mis-interpreted and the only risk he was prepared to take was regarding returns on a genuine investment – and I don't imagine he would have consciously sent money to someone he understood to be undoubtedly a scammer.

But I can't overlook that the reason he contacted Coutts in the first place and the reason he asked to continue with a recall of the recent payment, was clearly because of concerns that this could be a scam. And, even though it would have been appropriate for Coutts to have set out (in the calls or in an earlier intervention) the common hallmarks that might indicate a scam, I think it's also fair to say Mr S was already on notice of that risk when he called; he'd seen negative reviews that this could be a scam; he was advised not to send more money; he was told recovery would be difficult if it turned out to be fraud; and it was agreed he'd speak to his son (who'd also 'invested') and think about things before further action was to be taken in respect of the other payments also.

This is important because Coutts wouldn't have known for certain Mr S was being scammed either. A warning by the Financial Conduct Authority wasn't published about this scam broker until June 2021. And there was no obligation on Coutts to carry out due diligence into the 'investment' on Mr S's behalf in the way it's been suggested.

As noted above, after discussing the possibility of a scam, Mr S asked for a recall on the recent payment. He said *"I can always put that back in, whereas I can't always take that back out"* and he'd speak to his son and think about his situation before deciding what to do next. In an email to our Service he said further payments were then sent *"after I'd reassured myself Tradelax were legitimate"*. I don't know what checks he made which alleviated his concerns and led him to tell Coutts he wished to proceed at that time and later send more money. But, on balance, if an earlier intervention had taken place and Mr S was alerted to the red flags and advised to carry out more research into the legitimacy of the investment, I'm not convinced things would have played out very differently. It's unlikely any earlier research would have yielded different results to the due diligence he carried out when he started having concerns of being scammed in mid-November 2020.

To put it another way, I'm not persuaded an intervention would have prevented the losses, considering the actions he was prepared to take knowing what he did in November 2020 (including the negative reviews and the potential for it to be a scam) and the lack of other information about the scammer at the time that would have otherwise stopped him from going ahead. I'm also mindful Mr S has himself described how he was taken in by this particularly elaborate scam. He knew the 'investment' was unregulated. The withdrawals he made provided some reassurance. The returns were appealing. There's evidence to suggest he was to an extent not only taking advice from someone he believed was a genuine broker but also his son. And I think it is relevant to consider the decisions he may have been willing to take with his money against the backdrop that the losses were in any event *"manageable"*.

I've thought about the argument that Coutts also failed to intervene when a new payee was set up for Lipan Service. But these payments were part of the same scam (sent through a different payment processor) – and, again assuming that it should have done more, I've not seen anything to suggest that, by that time, new information had come to light about the scammer that would have likely stopped Mr S from making these last transactions.

So, in these circumstances, I don't consider it would be fair and reasonable to hold Coutts liable for Mr S's losses, because it seems more likely than not that he would have always made the payments to the scammer, notwithstanding any intervention by the bank.

Recovery

In general, a bank should attempt to recover lost funds once a scam has been reported. In this case, however, the transfers were sent to crypto wallets in Mr S's name before being sent to the scammer. It's therefore unlikely Coutts would have been able to facilitate a recovery of that money. For the initial credit card payment of £1,000 in early October 2020, I understand this has already been refunded.

Service issues

Mr S complains that when he called Coutts to express concerns about the scammer, and he was put on hold, two employees used inappropriate language while discussing his situation internally. He says their comments also show a lack of staff training in preventing scams. I'm not persuaded this second point affects my view on Coutts' liability for the payments (for the reasons given above), but I agree the comments were insensitive. And although they weren't intended to be heard by Mr S, and only came to light as a result of his complaint, I think an award of £100 is fair for the additional upset he's been caused at an already difficult time.

In respect to Mr S's suggestion, with reference to a newspaper article, that his data may have been provided to the scammer by a Coutts' employee, I've seen insufficient evidence to support that's what happened here. I would add that, according to Mr S, he came into contact with the scammer after seeing an advert and signing up through an online form.

As for the timing of a call Mr S received from a Coutts' employee, which he believes was inappropriate and may have been an attempt to interfere with his complaint (given he'd already instructed his solicitors), this would relate to activities around 'complaint-handling' which are not a regulated and not something I have the power to comment on.

My final decision

My final decision is that I uphold Mr and Mrs S's complaint. To put things right, Coutts & Company must pay £100 for the reasons I've given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 27 February 2024.

Thomas Cardia
Ombudsman