

The complaint

Mr K complains that Wise Payments Limited (Wise) is refusing to refund him the amount he lost as the result of 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 found an advertisement for a business (X) advertising investments using trading bots. Mr K was looking for an investment at the time and found the opportunity to be of interest so completed his contact details on an online form.

Mr K was contacted by X who seemed very convincing, and Mr K agreed to make an initial small investment. X guided Mr K through the process of setting up an account with Wise and the cryptocurrency exchange Binance using the screen sharing application AnyDesk. X said these accounts were necessary for the investment to take place.

X also took copies of Mr K's identification documents which appeared to Mr K to be the actions of a professional business.

After the initial investment Mr K was given access to an online platform that he could log into and view live trades.

Convinced by the professional appearance X gave off Mr K agreed to make further investments. Mr K made payments using both his card and the method of transfer. Mr K has told us that he has no recollection of who the transfers were going to but that they were to be used as part of the investments. I will call these individual scam accounts account A, B and C.

Mr K made the following payments:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>	<u>Payment Method</u>
19 September 2022	£500	Binance	Debit Card
21 September 2022	£2,000	Binance	Debit Card
28 September 2022	£200	Binance	Debit Card
3 October 2022	£3,300	Account A	Transfer
3 October 2022	£9,000	Account B	Transfer
3 October 2022	£8,500	Account B	Transfer
3 October 2022	£500	Account C	Transfer

Mr K realised he had fallen victim to a scam when he received a fake call from HMRC requesting a payment of £30,000 in consolidation fees. Mr K has not been able to recover any of the money he lost to the scam.

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 Wise sets out what happened clearly. What is in dispute is whether Wise should refund the funds Mr K lost due to the scam.

Recovery of the payments Mr K made

Wise was unable to process a chargeback for the payments Mr K made in relation to this scam to Binance.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr K was dealing with X, which was the business that instigated the scam. But Mr K didn't make the debit card payments to the scammer directly, he paid a separate cryptocurrency exchange (Binance). This is important because Wise was only able to process chargeback claims against the merchant he paid (Binance), not another party.

The service provided by Binance would have been to convert or facilitate conversion of Mr K's payments into cryptocurrency. Therefore, Binance provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr K paid. As Binance provided the requested service to Mr K any chargeback attempt would likely fail.

For the payments Mr K made via transfer, Wise attempted recovering them directly from the accounts they had been paid into. Unfortunately, the funds had already been withdrawn leaving Wise no other method of recovering them.

Should Wise have reasonably prevented the payments Mr K made?

Under regulations and in accordance with terms and conditions, authorised payment instructions should be executed without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making it. There is no dispute that Mr K made the payments and so they were authorised.

Wise is an electronic money issuer (EMI), not a bank or building society. EMIs are set up with the purpose of sending and receiving money, including internationally and in different currencies. And often that will be for large sums.

Mr K was using his account to receive and send funds of varying amounts to various new payees. Some of these payments were also for large amounts. But considering the type of account Mr K had opened and the purpose of this type of account I don't think Wise would have considered Mr K's usage of the account to have been unusual, and I don't think the payments should reasonably have triggered its fraud prevention systems.

As Wise's fraud prevention systems were not triggered by the payments Mr K made, I don't think Wise missed an opportunity to prevent the scam and it's therefore not responsible for Mr K's loss.

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 18 July 2023.

Terry Woodham
Ombudsman