

The complaint

Mr M complains that Wise Payments Limited ('Wise') won't refund him after he was the victim of a scam.

What happened

Mr M is represented in this case but for ease I'll refer to Mr M in this decision.

Mr M says that earlier in 2022 he fell victim to a romance/cryptocurrency scam (and was the victim of a binary options scam in 2007). Later in 2022 he received a call from someone I'll refer to in this decision as J who said he was associated with the Financial Action Task Force (FATF) and could help Mr M to recover his lost funds, which were now in cryptocurrency wallets. Mr M had lost around £43,000 and was told that he had funds worth £40,000 in a cryptocurrency wallet to recover but needed to pay around £6,000 to recover the funds.

Mr M looked at FATF's website and at other information about FATF and thought it looked like a professional organisation. And J knew personal information about him and the amount he lost in the previous scam. Mr M made the first three payments in the table below.

Then Mr M was told an amount of £140,000 had appeared in his wallet. When Mr M questioned this, he was told it likely related to a scam Mr M fell victim to in 2007 and that its value had risen over the years. Mr M made the £20,050 payment so that he could obtain this large sum that had been found.

It's not clear what the next payments related to, other than to release funds, but I've seen fake emails from Blockchain dated 15 and 16 September 2022. The one on 15 September says it's clear Mr M had tried to make a withdrawal from his wallet, but he needed to send a minimum of 1% of the amount he was going to withdraw as a guarantee. When this amount was paid, Mr M's accounts would be linked, and he'd receive €158,860.18. The fake email the following day said the amount had increased and Mr M needed to pay more.

J used a screen sharing application to open a Wise account and make the payments in the table below (with Mr M's authorisation).

Date	Amount	Method
02/08/22	£2,141	Transfer
03/08/22	£4,500	Transfer
03/08/22	£727	Transfer
11/08/22	£20,050	Transfer
08/09/22	£6,260 - <i>returned</i>	
09/09/22	£5,000	Transfer
09/09/22	£1,260	Transfer
09/09/22	£2,100	Transfer

14/09/22	£430	Card
15/09/22	£1,588	Transfer
16/09/22	£1,300	Transfer
16/09/22	£900	Transfer
Total	£39,269	

All payments were to a cryptocurrency exchange or to individuals to buy cryptocurrency using the peer-to-peer-platform.

Mr M didn't receive his lost funds and J stopped communicating with him. He also called the cryptocurrency wallet provider and was advised there were no funds. He called Wise to report the scam on 20 September 2022.

Wise investigated Mr M's complaint but didn't agree to reimburse anything. It referred to its terms of use and said it is unable to get involved in disputes between senders and recipients and can't be held responsible for losses that are beyond its control. Once it was aware of the potential scam, Wise said it took steps to prevent further transfers through its service. Wise attempted to recall the funds but was unsuccessful.

Mr M thinks Wise should have been aware of this type of scam and that it's very unusual for a customer with Mr M's profile to suddenly start to transfer large sums of money. Wise should have warned him that FATF wouldn't ask him for money.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. He said Wise acted reasonably when processing the first three payments as they were unremarkable and there was no payment history to compare them with. But when Mr M made the fourth payment on 11 August 2020 Wise should have intervened given the significant increase in value and the fact the increasing pattern of payments matched a known cryptocurrency scam. The investigator said that had Wise asked questions the scam would have been prevented. He didn't think Mr M should be held partly responsible for his loss.

Mr M accepted the investigator's findings, but Wise did not. In summary, Wise said:

- It provided ample warnings to Mr M. Although Wise had previously said no warnings were provided this was a mistake. Mr M was provided with scam warnings in respect of most of the scam payments (excluding the transactions for £5,000, £1,260 and £2,100).
- It's not reasonable or practical to expect Wise to stop the payments and speak to every customer who is shown the warnings.
- Mr M should take responsibility for his loss.

The complaint was passed to me, and I issued my provisional decision on 11 October 2023. In the "What I've provisionally decided – and why" section of my provisional decision I said,

"I'm very sorry that Mr M has lost so much money in a cruel scam. I need to decide whether it would be fair and reasonable for Wise, in all the circumstances of this case, to be held responsible for this loss.

Wise is an electronic money institute (EMI) and not a bank so isn't subject to the same expectations set out in guidance and regulation as a bank when it comes to fraud prevention. Wise should execute payment instructions without undue delay. And as a starting point there is a presumption that liability for authorised payments is on the payer, even where it might've been made as part of a scam. But I think Wise might be liable for

reasonably foreseeable losses if, in breach of its duty of care, it fails to act on information which ought reasonably to alert a prudent authorised payment institution to potential fraud or financial crime by, or against its customer.

I've thought carefully about Wise's obligations in this case, particularly given that Mr M was a new customer without previous activity to compare his actions against.

Like the investigator, I don't consider the first three payments in this case were so unusual or indicative of common scams that Wise ought reasonably to have done anything more than it did in providing an onscreen warning that broadly covered some common scams. The warning provided said:

"Protect yourself from scams

This could be a scam. It's hard to get your money back once you send it – so first, tell us what this transfer's for to get advice.

[There's a dropdown where Mr M chose sending money to himself]

Has someone asked you to move money to a "safe account"?

Stop – this is a scam. Wise, your bank, or the police will never ask you to do this.

Do you feel rushed or pressured into moving money?

Scammers will try to make you panic so you don't have time to think. If you feel this way, it's OK to cancel this payment now and come back later."

Mr M hadn't been asked to move funds to a safe account and I've not seen any evidence to suggest Mr M was rushed or pressured into making the payments, so I can understand why the warning above didn't resonate with him.

But when Mr M made the fourth transaction for over £20,000, I'm not persuaded Wise went far enough. The value of the payment had significantly increased and there was a pattern of payments common to scams of this nature. It's also clear that Wise recognised some form of risk in sending funds to a cryptocurrency exchange, as the above warning was provided in respect of each payment to the exchange but not when Mr M sent money to named individuals. The onscreen warning provided by Wise fails to mention cryptocurrency scams at all though and instead focuses on safe account scams and being under pressure.

I'm satisfied that if Wise had intervened when Mr M made the £20,050 payment the scam would have been uncovered. I say this because Mr M wasn't given any form of cover story and I see no reason why he wouldn't have given an honest answer. Mr M would have explained that he was trying to recover funds lost in a scam earlier in the year and had been communicating with FATF. Given Wise's knowledge of scams of this nature Wise would have been able to explain that paying cryptocurrency to recover funds lost in a previous scam is not legitimate meaning the loss (and all future payments) could have been prevented.

So I consider Wise should be responsible to some extent for this transaction and each subsequent payment.

Should Mr M be held partly responsible for the loss?

I've gone on to consider whether Mr M should share the loss with Wise.

The original basis of this scam was that Mr M was trying to recover the funds he lost in an earlier scam. I asked Mr M some questions about the original 2022 scam and whether he made a claim to his bank. I have received evidence that Mr M's bank refunded £35,855 in April 2022 and am told this relates to a refund under the Contingent Reimbursement Model Code (the CRM Code). So, if Mr M received a refund of the amount he lost in the earlier scam, I question why he thought he'd be able to recover more through J/FATF. It might be

that Mr M's bank didn't refund him in full, in which case I'd be grateful if Mr M could provide more information and evidence in response to this provisional decision.

Given the refund from Mr M's bank though, I consider he ought reasonably to have had concerns about being asked to pay over £6,000 to recover a further £40,000 - particularly as he said he lost around £43,000 in the original scam.

J told Mr M that he was associated with FATF – but didn't say he was from this organisation which is what I'd expect. FATF is an international policy-making and standard-setting body dedicated to combating money laundering and terrorist financing. Nothing on FATF's website, or any other information I have seen about FATF, suggests it gets involved in recovering funds for individuals. So, I think that if Mr M did any research into FATF he'd have had serious concerns about J's claims.

Mr M has also said that J claimed to have his own investment company. Mr M's payments though weren't made to FATF or to a company associated with J. And I don't consider that a legitimate company would ask Mr M to pay using cryptocurrency.

I'm also struggling to understand J's connection to Blockchain and how this relationship would make it easier to release Mr M's funds.

I think Mr M should also have had concerns about J's claim that funds from a 2007 scam had been located and about the amount that was available to return to him.

Overall, I'm provisionally satisfied that Mr M should share responsibility for his loss. Wise should refund half of all scam payments from (and including) 11 August 2022 as well as interest as set out below.

Taking into account good business practice and what I deem to be fair and reasonable, Wise is generally expected to assist its customers in recovering misappropriated or misdirected funds when put on notice. Wise attempted to recover Mr M's funds but was unsuccessful. I don't think Wise could have done anything more."

Mr M let me know that he accepted my provisional decision. Wise didn't respond.

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 Mr M has accepted my provisional findings and Wise hasn't responded I see no reason to depart from them. For the reasons set out in my provisional decision (and reproduced above) I've reached the decision that Wise should reimburse Mr M as set out below.

My final decision

I require Wise Payments Limited to:

- Refund 50% of £20,050 and all further scam payments listed in the table above (but not including the returned payment).
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement.

If Wise Payments Limited is legally required to deduct tax from the interest it should send Mr M a tax deduction certificate so he can claim it back from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 December 2023.

Jay Hadfield

Ombudsman