

The complaint

Mr S complains that Wise Payments Limited ('Wise') won't refund the money he lost as a result of an investment scam.

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 was contacted by someone claiming to be a representative of AG Partners (a scam broker) and they convinced him to open an account with Wise for the purpose of investing, as instructed, in cryptocurrency.

He says he gave the scammer remote access to his laptop and that he was told to set up accounts with cryptocurrency exchanges, through which funds would be sent from his Wise account to an ICO-project (oilbeam) with the promise that if the ICO-project reached funding of over one-hundred million, he'd receive more than one-million USD from his investment.

He also says he borrowed money from friends and that a reason he decided to invest was so he could pay a capital gains tax bill of about £95,000, following the sale of a property. A series of payments, funded by accounts Mr S held with two separate banks, were ultimately sent from his newly opened Wise account to his cryptocurrency exchange and to various other payees which I understand were likely operating in the Peer-to-Peer market (P2P).

The payments I've considered as part of this complaint are as follows:

	Date	Time	Payee	Method	Amount
1	31-May-22	6.41pm	Simplex	Card	225 Euros
2	01-Jun-22	12.53pm	Binance	Card	£1,000
3	02-Jun-22	11.53am	Binance	Card	£820
4	06-Jun-22	10.33am	Binance	Card	£5,000
5	06-Jun-22	12.05pm	Binance	Card	£2,000
6	07-Jun-22	10.06am	Binance	Card	£5,000
7	07-Jun-22	10.08am	Binance	Card	£2,000
8	07-Jun-22	2.50pm	Binance	Card	£3,000
9	07-Jun-22	2.56pm	Bryan Calderon De Alday	Transfer	£3,000
10	08-Jun-22	9.57am	Binance	Card	£4,000
11	08-Jun-22	1.23pm	Binance	Card	£1,000
12	13-Jun-22	2.38pm	Binance	Card	£5,000
13	13-Jun-22	2.47pm	Harol Londono Perez	Transfer	9,922 USD (£8,043)
14	13-Jun-22	2.58pm	Wong Wei Chun	Transfer	£10,768 (18,107.38 SGD)
15	13-Jun-22	3.17pm	Aigbedion Andrew	Transfer	£5,207
16	13-Jun-22	3.29pm	Wong Wei Chun	Transfer	£18,543 (31,257.15

					SGD)
17	13-Jun-22	3.41pm	Aigbedion Andrew	Transfer	£9,571
18	13-Jun-22	3.45pm	Maksym Omeliuk	Transfer	£2,482
19	15-Jun-22	2.58pm	Volodymyr Tychynskyi	Transfer	£5,000
20	16-Jun-22	1.24pm	Irwan Setiadi Sukmawan	Transfer	8,000 USD (£6,484)
21	16-Jun-22	1.27pm	Irwan Setiadi Sukmawan	Transfer	8,000 USD (£6,484)
22	16-Jun-22	1.29pm	Irwan Setiadi Sukmawan	Transfer	8,000 USD (£6,484)
23	16-Jun-22	1.31pm	Binance	Card	391 USD (£316)

Mr S says he realised he'd been scammed when he was told he needed to pay commission of over £100,000 in order to claim his profits. The scam was reported to Wise in July 2022. A complaint was raised and later referred to the Financial Ombudsman in August 2022.

Our Investigator reviewed Mr S's complaint and upheld it. In summary, she concluded that Wise should have intervened on payment 13 and that, if it had done so effectively, the scam would have likely been uncovered. She also concluded Mr S should bear equal responsibility for his losses, so Wise should reimburse 50% of the total amount paid from (and including) payment 13, with interest. Wise initially accepted the Investigator's recommendation but later failed to pay the agreed settlement and submitted more evidence for us to consider. As the matter couldn't be resolved informally, the case was passed to me to decide.

I issued my provisional decision to both parties in October 2023. I said I wasn't minded to uphold this complaint as I wasn't persuaded Wise can fairly and reasonably be held liable for Mr S's losses in the circumstances. I provided the following reasons:

Authorisation

'I'm sorry to hear Mr S was the victim of a scam and of the impact the whole experience has had on him. I can understand why he wants to do all he can to recover the money he's lost. But it's also accepted that he authorised the payments from his Wise account. So, although he didn't intend the money to go to the scammer, under the Payment Services Regulations 2017 and the terms of his account, Mr S is presumed liable for his loss in the first instance.

Prevention

There are, however, some situations in which an Electronic Money Institution (such as Wise) should, taking into account relevant rules, codes and best practice, have reasonably taken a closer look at the circumstances of a payment – if, for example, it's particularly suspicious.

In this respect, I've thought carefully about what Wise has said about its obligations under Visa and that its product is uniquely designed to allow customers to send large and various types of transactions to new recipients, and in different currencies. I've also thought about its comments around the lack of account history and why certain payments didn't trigger on Mr S's newly opened account, as spending patterns evolved. But it's also necessary to consider that, by the time Mr S started his payments, Wise ought to have had a good understanding of how these types of scams take place, including the use of cryptocurrency and of different payment methods, and of multiple transactions starting at a lower value and increasing over time, or made in quick succession.

In this case, it's not in dispute that some of Mr S's payments were considered by Wise as suspicious enough to have triggered its fraud-prevention system. It says the first alert was on transfer 9. I understand a generic scam warning was shown at that point and the money was sent after Mr S had selected the transfer reason as 'sending money to friends and family'. I also understand the next to have flagged was payment 15. And I acknowledge there was unusual activity on the account that would have reasonably warranted an intervention or a warning from Wise – such as payment 13 or arguably payment 8. But, even accepting that Wise ought reasonably to have intervened at either of these points, I'm not persuaded any intervention would have ultimately prevented the scam in any event.

This is because, as noted by the Investigator, there's evidence on file to show Mr S was prepared to give misleading or incomplete information when asked about the reason for his transactions by one of the banks from which the money originated. In a call on 8 June 2022, for example, he told his bank that the money was going to his "business account". A week later, he said he was "buying land [abroad]...and I need to send the money over". In a call, on 24 June 2022, he told his bank he'd not been contacted by anyone about making his investment. During a fraud check later that day, he said he became interested in crypto through adverts he'd seen on "the tubes" and added "one of my friends is into crypto, he told me about it... and I did my research". In response to the question if he'd received help and advice from anyone else he replied "no". He said no software had been downloaded to his laptop.

At no point did Mr S say anything about an ICO-project or receiving advice from AG partners who, according to his testimony, had called him 'out of the blue'. I appreciate Mr S may have been coached by the scammer on what to say for his payments to go through without issue. I also realise he's particularly concerned his account wasn't blocked until later in June 2022, after the above listed payments had been made. But, on the evidence, I can't fairly conclude he'd have been upfront about what was really happening, even if Wise had intervened at any point and asked him probing questions about the nature of his transactions.

It's important for me to add here that Wise wouldn't have known for certain that Mr S was being scammed – and, crucially, unlike the Investigator, I'm not convinced an appropriate level of questioning by Wise would have resulted in Mr S being unable to find a way around the truth, such that the scam would necessarily have been uncovered. A firm isn't expected to subject its customers to an interrogation. It's expected to ask suitable questions designed to disturb or unearth a potential scam and establish if the customer is at risk of financial harm. If, as the evidence shows, Mr S wasn't going to give honest answers to this sort of questioning, then it's difficult to see how Wise could reasonably have uncovered the scam.

It's also important to note that all payments were sent either to an exchange account held by Mr S or to payees seemingly trading in the P2P market. In one of his messages to the scammer Mr S refers to paying "ten thousand pounds to P2P". Both are legitimate ways for customers to buy cryptocurrency if that's what they want to do, and the information indicates Mr S wanted to continue to invest in it, despite having been told it's largely unregulated.

All this means that, even though I consider Wise ought to have done more, I don't think, on balance, that its failure to probe further can reasonably be seen as the proximate cause of Mr S's losses, as it seems likely he would have given misleading information and continued to make his transactions irrespective of any intervention.

Recovery

In general, a business should attempt to recover lost funds once a scam has been reported. In this case, however, it seems the transfers were made directly to third-party payees for the purchase of cryptocurrency in the P2P market – and that's what Mr S received in return. I've seen no evidence to suggest the third-parties were involved in the scam and, given that the matter was reported to Wise weeks after the last disputed transaction, it's unlikely it could have facilitate a recovery. The card payments, on the other hand, were sent to an exchange in Mr S name before being forwarded to the scammer. This means Wise wouldn't have been able to recover that money either through a recall or a chargeback claim.

Complaint handling

In later correspondence to the Financial Ombudsman, Wise said it wanted to compensate Mr S for its delays and poor handling of his complaint. It apologised for the additional stress Mr S was caused as a result, at an already difficult time. Although complaint handling isn't a regulated activity and I can't comment on any offer relating to it, I'm pleased that the £1,500 offered has already been paid to Mr S.'

Responses to provisional decision

I invited further comments and evidence from both parties. Wise didn't respond to my provisional decision. Mr S replied saying, in summary:

- The provisional decision didn't mention the fact that Wise had initially accepted the Investigator's view and agreed to settle on that basis. The Investigator's outcome and agreed settlement were legally binding on Wise.
- Wise was given enough time to submit its evidence before the Investigator issued their outcome. It's unacceptable that Wise was then given more time to submit its findings after that. This was frustrating and affected Mr S's health.
- The provisional decision didn't say whether the Investigator had made a mistake in reaching their conclusions and if they'd failed in their task.

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 won't be upholding it.

This is because, for the reasons set out in my provisional decision and which form part of this final decision, I'm not persuaded that Wise's failure to intervene and question Mr S about the nature of his payments, can reasonably be seen as the proximate cause of his losses. I explained that, on the evidence, it's likely he'd have given Wise misleading or incomplete information and continued to make his transactions irrespective of any intervention. As no new information or comments have been provided on the merits of this case to convince me otherwise, I see no reason to depart from the conclusions in my provisional decision.

I can understand Mr S's frustration that Wise initially accepted the Investigator's outcome and agreed to settle on that basis before the case was re-opened for further investigation. It's true there were delays in Wise providing us with all the evidence it wanted us to consider and I did mention in my provisional decision that Wise had acknowledged its poor complaint handling and had paid Mr S £1,500 in recognition of what had happened.

But the offer wasn't in 'full and final settlement' of the complaint and, as the Investigator explained at the time, an Investigator's outcome isn't legally binding on a business. And as Wise hadn't paid the agreed settlement, it was necessary for the case to be referred to an Ombudsman so that a final decision could be made – only an Ombudsman's final decision is legally binding on a business (if accepted by the complainant) and can be enforced in court if necessary. To manage expectations, it was also explained that an Ombudsman would review the whole file afresh and reach their own independent outcome. Both parties were then given equal opportunity to make any further representations they wished to make.

I appreciate this case is important to Mr S and he's disappointed at the change in outcome. I hope it'll help him to know that it can sometimes happen, as part of an independent review, for an Ombudsman to reach different conclusions to those of an Investigator. That doesn't mean the Investigator necessarily *"failed in their task"* and that's not something I'm required to comment on when setting out the reasons for my decision, which needs to be based on the individual facts and circumstances of the complaint Mr S raised against Wise.

I'm again sorry Mr S was the victim of a cruel scam and I'm mindful of the impact this has had on him. But, for the reasons I've given, I'm not persuaded an intervention by Wise would have made a difference such that it can fairly and reasonably be held liable for his losses.

My final decision

For the reasons given above, I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 December 2023.

Thomas Cardia
Ombudsman