

The complaint

Mr Z complains that Wise Payments Limited (“Wise”) won’t refund around £17,000 that he lost to an investment scam.

What happened

The details to this complaint are well known by both parties, so I won’t repeat everything again here. In brief summary, Mr Z fell victim to an investment scam beginning in September 2022 after he found an advert for a cryptocurrency investment on social media that had purportedly been endorsed by a celebrity. He was contacted by a broker (“the scammer”) after registering his interest and decided to invest.

The scammer instructed Mr Z to download remote access software to his device and talked him through opening a cryptocurrency account with Binance, which he was told would be needed to trade, as well as an account with Wise in order to send money to the crypto wallet. He began investing small amounts initially, and later received an email from what he thought was Binance (which was in fact the scammer), saying he had to pay money into his account in order to carry out ‘liquidity checks’ in order to access his money. Mr Z made the following payments from his Wise account:

Date	Payee	Amount	Payment method
29 September 2022	Binance	£5,000	Payment card
11 October 2022	Binance	£5,000	Payment card
11 October 2022	Private individual	£6,960	Transfer

Although the payments Mr Z made to Binance were paid to an account in his own name, the funds were transferred on from there to the scammer’s own crypto wallet. Mr Z realised he’d been scammed when he paid a large amount of money to carry out the ‘liquidity checks’ but didn’t receive any funds back. He reported the fraud to Wise but it said it wouldn’t refund the money he lost as he’d authorised the payments. Unhappy with this, Mr Z referred the matter to our service.

Our investigator upheld Mr Z’s complaint. She thought that Wise ought reasonably to have made further enquiries before processing the £6,960 payment made on 11 October 2022 on the basis of it being suspicious and thought it could have prevented any further loss if it had given a tailored warning to Mr Z about the risks of investment scams. So, the investigator recommended that Wise refund this payment, albeit with a 50% deduction in recognition of Mr Z’s own contribution to his loss. Mr Z accepted the investigator’s proposal, but Wise disagreed, so the matter has been escalated to me to determine.

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 agree with the conclusions reached by the investigator and have decided to uphold it. I'll explain why.

It isn't in dispute that Mr Z authorised the disputed payments he made from his Wise account. The payments were requested by him using his legitimate security credentials provided by Wise, and the starting position is that firms ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether Wise should have done more to prevent Mr Z from falling victim to the scam, as there are some situations in which a firm should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly suspicious or out of character.

In terms of the first two payments of £5,000, I don't think these were unusual or suspicious enough to have warranted Wise making further enquiries to determine the nature of the payments. The value was not significant enough to indicate a risk of financial harm, and they were also paid across the space of almost two weeks. Mr Z's account was also newly opened on 26 September 2022, so Wise wouldn't have had any account history to compare the spending against to determine whether it was unusual or not. At most, Wise would've been reasonably expected to provide a written warning broadly covering scam risks when Mr Z went to make the first payment of £5,000. But I'm not persuaded such a general warning would've likely deterred Mr Z from making the payments in any event.

However, by the time he came to make the payment of £6,960 on 11 October 2022, it then meant he had paid over £10,000 from his account in less than 14 minutes, the first payment of which was going to a cryptocurrency platform, and the second to a new payee. Wise will be aware that making large payments in quick succession can often be indicative of financial harm. So, in these circumstances, I think Wise ought fairly and reasonably to have identified from the information available to it that there might be an increased risk associated with the payment and, in those circumstances it should fairly and reasonably have made further enquiries to determine the purpose of the payment and provided a tailored scam warning.

I've thought carefully about whether a specific investment scam warning would have likely prevented any further loss in this case. And on the balance of probabilities, I think it would have. If Wise had asked Mr Z to disclose the purpose for the payment he was making, I think it's likely he would have been upfront about what he was doing. There's no indication that he had been coached by the scammer into misleading Wise, for example, so I'm satisfied he would have likely disclosed that the purpose of the payment was for an investment.

Wise should have then provided a specific warning to Mr Z covering off the key features of investment scams, such as being contacted a 'broker' that has supposedly been endorsed by a celebrity, the use of remote access software, promising significant returns as well as asking for large sums of money to gain access to their funds. These are all common hallmarks of an investment scam, and it was also the exact circumstances of the situation Mr Z had found himself in.

Therefore, if Wise had provided Mr Z with an impactful warning that gave further details about how he could protect himself from the risk of fraud, I believe it would have resonated with him. He could have paused and looked more closely into the broker before proceeding, as well as making further enquiries into cryptocurrency scams and whether it was usual to have to pay large amounts of money to show 'liquidity' in order to access funds. Mr Z could have discovered that this is a common tactic used by scammers, as well as the various regulatory warnings about the risk of cryptocurrency investment scams. Therefore, I'm

satisfied that a warning to Mr Z from Wise would probably have exposed the scammer's false pretences and prevented any further losses, such that it should now fairly and reasonably refund this money.

However, there is a general principle that consumers must take responsibility for their decisions, and I am mindful of the law relating to contributory negligence and the impact a finding of contributory negligence may have to reduce the damages recoverable by a claimant in court proceedings.

I have duly considered whether it would be fair and reasonable for Mr Z to bear some responsibility by way of contributory negligence, and I'm satisfied that he should in the circumstances of this case.

First, the returns Mr Z was supposedly receiving seemed to have been far too unrealistic. He said, for example, that his deposit of £5,000 resulted in his money increasing in value by to £12,000, which ought reasonably to have seemed too good to be true.

Secondly, Mr Z thought he was paying money to his Binance wallet to perform a 'liquidity check' yet he was making a payment to a private individual, which ought to have given him serious cause for concern that something wasn't right. The scammer told Mr Z that the person he was paying would 'sort' the funds into his crypto account. However, it doesn't appear that Mr Z questioned this or received a plausible explanation for how this money would reach his crypto wallet, or why he wouldn't be able to pay money to his account in the way he'd been doing previously up until that point.

Mr Z's representatives have said that he was vulnerable at the time as he'd recently had his bikes stolen. But while I appreciate this may have been upsetting for him, I fail to see how this left him more vulnerable to being scammed. I've not seen any persuasive evidence to suggest that he wouldn't have had an appreciation for what he was doing, nor that he wouldn't have been able to protect himself from the risk of being scammed.

As a result, I'm not persuaded he can reasonably be considered as *vulnerable* in these circumstances. So, I think Mr Z did have a role to play in what happened and I think that the amount Wise should pay to him in compensation should fairly and reasonably be reduced to reflect that role. Given how serious I think Mr Z's concerns about the legitimacy of the investment ought reasonably to have been, I think that a fair deduction is 50%.

Finally, I don't think there was anything more Wise could have done to recover the money Mr Z lost. I can see it attempted to recall the funds from the recipient account of the £6,960 payment, but without success. And in terms of the card payments, any chargeback attempt would have likely been unsuccessful given the payments were made to purchase cryptocurrency, which the merchant would be able to show had been provided to Mr Z. So, I don't think there was anything more Wise could've done to recover the money in these circumstances.

My final decision

For the reasons given above, I uphold this complaint and direct Wise Payments Limited to:

- Refund 50% of the £6,960 payment made on 11 October 2022.
- Pay 8% simple interest per year on this amount from the date the payment was made until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or

reject my decision before 2 January 2024.

Jack Ferris
Ombudsman