

The complaint

Mr W complains that Wise Payments Limited (Wise) is refusing to refund him the amount he lost as the result of a scam.

Mr W is being represented by a third party. To keep things simple, I will refer to Mr W 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 W found a company on Facebook called Area Trading IO (X) that appeared to specialise in crypto currency investment. The website looked professional and after checking online reviews Mr W was comfortable that X was legitimate. Mr W decided to start investing.

X told Mr W he would need to transfer the money into the investment via the cryptocurrency exchange Binance, and that the easiest way to make payments into Binance was to open a new account with Wise. X helped Mr W with the investment process using the screen sharing application AnyDesk.

A new account was opened with Wise and after funds were transferred into the account by Mr W, they were immediately sent to Binance, then forwarded to X for the investment.

After Mr W made the first payment into the investment, he could see he had made a reasonable return and attempted to make a withdrawal. When he did this, he received a fake email from Binance requesting payments be made to release the funds. Mr W made the payments as requested but the withdrawal was not processed, and further funds were requested.

At this point it was clear that Mr W had fallen victim to a scam.

Mr W made the following payments into the scam via Binance using his Wise debit card.

Date	Payee	Payment Method	Amount
2 September 2022	Binance	Debit Card	£8,000
14 September 2022	Binance	Debit Card	£10,000
14 September 2022	Binance	Debit Card	£8,000

Our Investigator considered Mr W's complaint and thought it should be upheld in part. Mr W and Wise both 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 W has fallen victim to a cruel scam. The evidence provided by both Mr W and Wise sets out what happened. What is in dispute is whether Wise should refund the money Mr W lost due to the scam.

Recovering the payments Mr W made

Mr W made payments into the scam via his debit card. When payments are made by card the only recovery option Wise has is to request a chargeback.

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

The service provided by Binance would have been to convert or facilitate conversion of Mr W'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 W paid.

As the service requested by Binance was provided to him, chargeback wasn't an option for Mr W.

Should Wise have reasonably prevented the payments Mr W made?

It has been accepted that Mr W authorised the payments that were made from his account with Wise, albeit on X's instruction. So, the starting point here is that Mr W is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Wise should have been aware of the scam and stepped into question Mr W about the payments he was making. And if it had questioned Mr W, would it have been able to prevent the scam taking place.

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.

Mr W had opened his account with Wise for the purpose of making payments into the scam. So, Wise didn't have any history to compare Mr W's spending habits with. While the first payment Mr W made was for a reasonably high value (£8,000), I don't think it was unreasonable that Wise allowed the payment to be processed without any intervention. The payment was after all being made to a legitimate business.

The second payment Mr W made from his Wise account was for a higher value and was only the second ever payment Mr W had made from the account. Considering the value of this payment I think Wise should have stepped in at this point and questioned Mr W about what the payment was for.

I haven't seen anything that makes me think Mr W wouldn't have given honest responses to Wise's question had it stepped in. So, I think it's likely Mr W would have told Wise he had found an advertisement on Facebook, was asked to make payments via Binance after setting up a new Wise account and was being asked to send more funds so his profits could be released. He would also have told Wise that he had downloaded AnyDesk so X could help him with the process.

These are all hallmarks of a common scam that Wise would have been aware of at the time, so I am satisfied that if Wise had intervened, as I think it should have when Mr W made the second payment into the scam, the scam would have been uncovered and any further loss would have been prevented. So Wise is responsible for Mr W's loss.

Did Mr W contribute to his loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances I don't think it would be fair to say Mr W contributed to the loss. I say this because Mr W had no previous experience in this type of investment and was lulled into a false sense of security by a scammer that went to great lengths to appear to be legitimate. Mr W also carried out his own research before agreeing to invest and reviews appeared to show X was legitimate.

Putting things right

Wise Payments Limited should refund the payments Mr W made into the scam on 14 September 2022 for a total of £18,000.

Wise Payments Limited should add 8% simple interest per year to the amount it pays Mr W from the time Mr W made the payments to the time Wise Payments Limited provides the refund (less any lawfully deductible tax).

My final decision

I uphold this complaint and require Wise Payments Limited to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 February 2024.

Terry Woodham
Ombudsman