

The complaint

Mr C complains that Wise Payments Limited trading as Wise didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr C was the victim of an investment scam. In August 2021, he was introduced by a friend to someone I'll refer to as "the scammer" who claimed to work for an investment company I'll refer to as "M". Mr C communicated with the scammer via Telegram and told him he could make returns of up to 10% by investing in cryptocurrency.

The scammer asked Mr C to transfer money from his Wise account to an account he held with another electronic money institute ("EMI") which I'll refer to as R. From there he would purchase cryptocurrency through a cryptocurrency exchange company I'll refer to as "B" and then load it onto an online wallet. Between 9 August 2021 and 13 June 2022, he made eight transactions to R totalling 6,900 Euros and twelve transactions to various individuals totalling £9839.87.

Mr C realised he'd been scammed when he was unable to withdraw any funds. He complained to Wise but it refused to refund any of the money he'd lost. It said it was unable to recover any funds, explaining transfers made for cryptocurrency trading or as a result of a scam are moved within minutes or hours, so no funds remained.

It said the obligation of ensuring the legitimacy of the recipient lies with the sender of the payment, it doesn't have the ability to be involved in disputes between senders and recipients, and customers should perform their own investigations before setting up a payment.

It said it can only control and monitor activities in relation to its own customers and once it was made aware of the recipient accounts possibly being used for scam purposes, it took the appropriate action.

It said it had no reason to believe the transfers weren't legitimate and as the debit card payments were to Mr C's own account, they wouldn't be considered fraudulent. And it can't be held responsible for the further movement of funds after the transactions were completed as this was outside its control and didn't occur on its platform.

Mr C wasn't satisfied and so he complained to this service but our investigator didn't think the complaint should be upheld. He explained he didn't think Wise needed to intervene as the transactions weren't high value or out of character and they weren't made in quick succession.

He explained it wouldn't have been possible for Wise to process a chargeback claim against the scam company as Mr C didn't pay them directly and given the length of time that had passed there was no prospect of a successful recovery.

Mr C has asked for the complaint to be reviewed by an Ombudsman. He's said he would accept a refund of 50% of the disputed amount. He's commented that Wise failed to produce the information our investigator requested, and he maintains the transactions were suspicious because he hadn't previously used the account for P2P cryptocurrency purchases or payments to his account with R. Other than the scam payments, the account was only used for very small payments, so they were out of character. He's argued the payees were new, the scam lasted for an extended period and whenever the account was topped up the funds were paid out, leaving the account almost empty.

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've reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr C has been the victim of a cruel scam. I know he feels strongly about this complaint and this will come as a disappointment to him, so I'll explain why.

Mr C has commented that Wise has failed to produce its file, but I'm satisfied I have enough information to reach a fair outcome.

I've thought about whether Wise could have done more to recover the card payment when Mr C reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Wise) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr C).

It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the merchant would have been able to evidence they'd done what was asked of them. That is, in exchange for Mr C's payment, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail.

I'm also satisfied Mr C 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, he is presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mr C didn't intend his money to go to scammers, he did authorise the disputed payments. Wise is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

Wise was an emoney/money remittance provider and at the time these events took place it wasn't subject to all of the same rules, regulations and best practice that applied to banks and building societies. But it was subject to the FCA's Principles for Businesses and BCOBS 2 and owed a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible.

I've thought about whether Wise could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to legitimate cryptocurrency sellers. However, Wise ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr C when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Wise to intervene with a view to protecting Mr C from financial harm due to fraud.

The payments didn't flag as suspicious on Wise's systems. The first seven payments were to an account in Mr C's own name and they were for relatively low values, so Wise wouldn't have needed to intervene.

The P2P payments were to named individuals and so it wouldn't have been apparent that Mr C was buying cryptocurrency. None of the payments were high value or made in quick succession, in fact as Mr C has pointed out, the transactions were spread out over several months. I note Mr C's comment that the payees were new and the account was topped up before the funds were paid out, but in circumstances where he was paying out such small amounts, I don't think Wise's fraud systems should have triggered based on these factors alone. Mr C did make one payment to a merchant with links to cryptocurrency on 31 May 2022 but it was over six months after the previous scam payment and it was low value. So I don't think Wise missed an opportunity to intervene.

Overall, I'm satisfied Wise took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud. I'm sorry to hear Mr C has lost money and the effect this has had on him. But for the reasons I've explained, I don't think Wise is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

Recovery

I don't think there was a realistic prospect of a successful recovery of the debit card payments because Mr C paid an account in his own name and moved the funds onwards from there. And he received the cryptocurrency from the P2P sellers.

Compensation

Mr C isn't entitled to any compensation or legal costs.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 April 2024.

Carolyn Bonnell
Ombudsman