

The complaint

Mr J via a representative complains that Wise Payments Limited ("Wise") won't refund the money he lost to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here.

In December 2022, Mr J was looking online at investment opportunities and came across what appeared to be a scheme offering investment in bitcoin with a company I will call B.

Mr J clicked on the website and entered some details and was contacted by phone. The individual who contacted Mr J discussed his reasons for wanting to invest and talked him through how things worked and what to expect.

Mr J was persuaded to invest and was provided details of a customer portal to see his investments. He downloaded remote access software on request of B, and it, via remote access, assisted in opening an account with Wise as well as with a different Electronic Money Institution ("EMI"). He then made a number of card payments from both accounts to crypto exchanges where the funds were then converted into crypto and sent to B.

Mr J made the following payments from his Wise account;

Transaction Number	Date	Amount
1	19 December 2022	£2,000
2	13 January 2023	£9,887.45
3	16 January 2023	£1,811.52
4	16 January 2023	Credit £1,811.52
5	16 January 2023	£1,811.52
6	16 January 2023	Credit £1,811.52
7	21 January 2023	£1,752.01
8	23 January 2023	£8,278.8
9	26 January 2023	£9,990

Mr J realised he had been scammed when he contacted a third party with a query about the withdrawal of his profits. At that point he found out that he did not have an account with that third party and therefore that what he was told by the scammer was incorrect.

He raised a complaint with Wise and requested that he be refunded the above transactions. Wise declined to do this.

Our investigator upheld the complaint in part. He thought that Wise ought to have provided a tailored warning about cryptocurrency scams at transaction 2. The investigator thought, had that happened, the scam would likely have been stopped. Therefore, the investigator said that Wise should pay 50% of the loss after this point. He said this because he thought that Wise and Mr J were each responsible for 50% of the loss. So, there should be a deduction of

50% in recognition of Mr J's own contributory negligence. Wise did not agree with this and requested that this case be reviewed by an ombudsman.

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 isn't in dispute that Mr J has fallen victim to a scam here, nor that he authorised the disputed payments he made to B (where his funds were subsequently transferred on to the scammers). The payments were requested by him using his legitimate security credentials provided by Wise, and the starting position is that EMI 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 J from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character for that account holder.

I understand the investigator considered payment 2 ought to have been regarded as unusual. I agree with this given that it was a large payment and was to a crypto exchange. In my view this really should have been flagged by Wise as being unusual account activity. So, I'm satisfied this payment ought reasonably to have been considered as unusual and triggered an intervention by Wise.

Had Wise intervened at this point and provided a tailored warning about crypto currency scams I think that this would have prevented the scam. I think a warning setting out the signs of a crypto currency scam such as having to purchase crypto to send to an investment platform, being offered guaranteed returns, the use of remote access software and being unable to withdraw funds would have likely made Mr J aware that what he was doing had the signs of an investment scam. So, I think that had a warning been provided Mr J would have stopped making the transactions to B.

Wise has argued that as the scammer was using remote access software it would have seen the warning rather than Mr J. But Mr J has clarified that the remote access software was used to set up the accounts with Wise the other EMI and B's customer portal. It was not used for the payments themselves. So, I think Mr J would have seen any warning provided by Wise.

Wise have also said that it did contact Mr J about payment 1. It says that Mr J contacted Wise to dispute this payment and Wise sent him an e-mail asking for more details. Wise says that Mr J did not respond and therefore it is Mr J's fault that the scam was not stopped.

I have carefully considered this point, but I don't think that one attempt at contacting Mr J means that Wise should not have provided a scam warning when transaction 2 was attempted. I also think that such a warning provided prior to the payment being sent would have been heeded by Mr J. Whilst it is possible that Mr J responding to the e-mail sent by Wise would have stopped the scam I also think that Wise should have provided a warning at payment 2 and this would have on balance stopped the scam. I am therefore concluding that Wise's failure to provide a warning led to Mr J's loss,

As a result, I believe Wise should refund the payments Mr J lost to the scam from transaction 2.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether Mr J should bear some responsibility by way of contributory negligence. In the circumstances, I'm satisfied he should do so in this case.

In the circumstances, I don't consider Mr J carried out sufficient research into B to ensure that the company he was dealing with was genuine. Mr J was also offered a guaranteed 20% return monthly which is very unrealistic.

Therefore, I'm satisfied that Mr J's lack of due diligence and failure to question what he was being promised contributed to his loss, such that he should share responsibility with Wise. Because of this, I'm satisfied a 50% deduction is fair and reasonable in the circumstances.

Recovery

I've also thought about whether Wise could have done more to attempt to recover the payments after Mr J reported the fraud. The Contingent Reimbursement Model ("CRM") does not apply to debit card payments.

I also don't consider Wise ought to have attempted a chargeback claim, as Mr J made payments to his own crypto account for the purchase of crypto and he seems to have received this before he forwarded it on to B. So, he got what he paid for.

Putting things right

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

- Refund the payments Mr J lost to the scam from and including transaction 2 onwards minus any already refunded. Then reduce this by 50% in recognition of Mr J's own contributory negligence towards his loss.
- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

My final decision

My decision is that I uphold this complaint in part and direct Wise Payments Limited to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 8 May 2024.

Charlie Newton
Ombudsman