

The complaint

Ms R complains that Wise Payments Limited (“Wise”) won’t refund money she 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 brief summary, Ms R fell victim to an investment scam in April 2022 after she was contacted by a broker ‘Terra Markets’ (“the scammer”).

She was encouraged to invest, and accounts were opened in her name with several cryptocurrency platforms and electronic money institutions, including Wise and Revolut, which she was told would be needed for trading. Ms R then made several payments from her bank accounts to her Wise account. From her Wise account, she says the scammer then made ten payments to her Revolut account between 13 and 20 May 2022, totalling £57,720, where her funds were then transferred on again to the scammer.

Following this, Ms R said the scammer then made several other payments to third-party payees in the following order, totalling £59,000:

Date	Payee name (abbreviated)	Payment type	Amount
21/05/2022	LOI	Transfer	£5,391
21/05/2022	IKTDR	Transfer	£2,700
21/05/2022	IKDTR	Transfer	£100.00
21/05/2022	SA	Transfer	£4,500
21/05/2022	SA	Transfer	£5,900
23/05/2022	WWC	Transfer	£10,000
23/05/2022	IJ	Transfer	£6,440
23/05/2022	IKDTR	Transfer	£5,000
23/05/2022	LOI	Transfer	£3,560
23/05/2022	AH	Transfer	£4,000
23/05/2022	LOI	Transfer	£4,000
24/05/2022	WWC	Transfer	£6,364

24/05/2022	SKY	Transfer	£1,045.00
		Total	£59,000

Ms R later realised she had been scammed and reported the fraud to Wise. Wise accepted it had made a mistake by allowing one of the payees ('LOI') to re-open their account, as it had previously been closed on 19 May 2022, but the account was somehow reactivated. It therefore agreed to refund the payments Ms R made to this payee between 21 and 23 May 2022 along with 8% simple interest, but it declined to refund any of the other payments as it said Ms R had authorised them.

Unhappy with this, Ms R referred the matter to our service. Our investigator upheld the complaint in part. She didn't think Wise would've been able to prevent the scam if it had intervened, as she'd seen evidence that Ms R had been dishonest with other banks when questioned as part of the same scam. So, she didn't think Wise could be held liable for the payments on this basis.

The investigator thought Wise's offer to refund the payments made to LOI was fair. However, she wasn't satisfied that Wise acted quickly enough to try and recover the funds from the other third-party accounts when the fraud was reported on 26 May 2022.

Wise explained that some of the third-party recipients were Wise users, and it provided statements to show that some of the accounts had funds remaining at the time the fraud was reported, whereas others did not. However, it said that the recipients all appeared to be crypto traders who were neither aware of, nor directly involved in the scam. Wise said the recipients therefore had a legitimate claim to the funds in question as they would have provided Ms R with cryptocurrency in return for the money she'd paid. So, Wise said it would not have been permitted to return these funds even if it had acted sooner to recover the money. However, in light of the poor service Ms R had received, it offered a total of £550 compensation.

Our investigator didn't think Wise had provided enough evidence to demonstrate that the third-party payees were genuine crypto traders. So, she thought it should return any funds that were remaining in these accounts at the time Ms R reported the fraud. Wise disagreed, so the matter was escalated to me to determine.

I issued my provisional decision on this complain in December 2023. I said I was minded to uphold it, but on a different basis to the investigator and set out the following reasons:

Authorisation

Ms R says that she didn't authorise the payments made from her Wise account as they were made by the scammer. So, I've considered if there's enough evidence to suggest whether Ms R authorised the payments or not.

The Payment Service Regulations (PSRs) 2017 say that a payment transaction is authorised by the payer where they have given their consent to the execution of the payment transaction. Such consent must be given in the form and in accordance with the procedure agreed between the payer and the payment service provider.

I understand that Ms R may not have physically made the payments herself as the scammer had taken control of her device via remote access software. The PSRs 2017 do allow for payment transactions to be initiated by someone acting on behalf of the account holder, which can be agreed informally (e.g. by the account holder

asking or permitting a third party to undertake a task on their behalf). And if the account holder has permitted a third party to appear as if they have the consumer's authority to make payment transactions, those payment transactions will likely be authorised, even in situations where the consumer didn't ask the third party to make payments or know about them.

In this instance, Ms R was aware that payments were being made on her behalf and knew that the scammer was transferring money out of her Wise account. I have therefore treated all of the disputed payments as having been authorised by Ms R. And the starting position in this scenario is that firms ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed, with Ms R being presumed liable for the loss in the first instance.

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

Did Wise do enough to prevent Ms R's loss to the scam?

I'm satisfied there was enough suspicious activity present on Ms R's account such that Wise should have provided her with a written warning, or even got in contact with her to discuss the payments she was making, as I note she transferred £15,000 to her Revolut account in the same day, for example. And given these were among the first transactions from a newly opened account, I think it ought to have prompted Wise to have had a closer look at what was happening to check that Ms R was not at risk of financial harm.

But even accepting that Wise should have provided a scam warning or blocked any of the payments prior to making further enquiries, I'm not persuaded this would have ultimately prevented the scam in any event. I say this because Ms R had been coached by the scammer to lie if she was questioned about any of the payments she was making. Indeed, when she was questioned by some of her other banks, she maintained that no one was asking her to make the payments, and that no one had told her to lie to the bank. She didn't disclose that the payments were for an investment, for example, and instead gave misleading answers such as paying money for home improvements and her father's operation.

I appreciate that Ms R may not have been specifically coached on what to say if she was questioned by Wise. But I note that Ms R was in contact with the scammer at every step of the scam, who was pressuring her into agreeing to take out loans, make payments and lie to the banks whenever she was questioned. She said she was told that if she didn't comply with the scammer's instructions that she would risk losing everything she had invested so far. As a result, it seems more likely than not that if Wise had started asking questions, she would have been told to lie in the same way she had with her other banks. And given the warnings she had been given by her other banks, which were not acted upon, it seems unlikely that any written scam warning Wise could have provided would've had any impact either.

So, overall, while I think Wise ought to have done more in these circumstances, I'm not persuaded any form of intervention would've likely prevented Ms R's loss, as it seems likely she would have provided false information in order to make the payments, as she did with her other banks. Therefore, I don't think Wise's failure to intervene appropriately can reasonably be considered as the proximate cause of Ms R's loss in these circumstances.

Wise has, however, conceded liability for payments Ms R made to another Wise payee whose account should have been closed by the time the payments were made. It has said the account was closed on 19 May 2022 but, due to an error, was able to be reactivated by the account holder, and therefore received the payments Ms R made to it between 21 – 23 May 2022. Wise has agreed to refund these payments as a result, as well as 8% simple interest per year, which I'm satisfied is fair and reasonable in the circumstances. But due to the reasons set out above, I don't consider it is liable to refund any of the other payments on the basis of it failing to intervene appropriately.

Recovery

I've also considered whether Wise could have done more to recover the money after the fraud was reported.

In terms of the payments Ms R made to her own Revolut account, I'm satisfied there would've been little to no prospect of Wise recovering this money given we know it was transferred on again from there to the scammer.

However, in terms of the payments Ms R made to other accounts that were not in her name, Wise would be expected to take action to try and recover any funds lost to fraud as soon as reasonably possible following it being made aware.

In this instance, Ms R reported the fraud to Wise on 26 May 2022. However, it didn't take any action to try and recover the money at that point and instead asked further questions. Ms R responded to Wise's questions on 31 May 2022 but then received no further contact. Wise then failed to undertake any form of investigation until Ms R brought her complaint to this service. As a result, there's the potential that it missed an opportunity to try and recover the funds sent to other accounts that were not in Ms R's name.

Wise has said that the majority of third-party payees Ms R sent money to are Wise accounts (apart from the payee 'WWC' which was an international payee). However, it has said the recipients have a legitimate claim to the funds in question as it appears they were cryptocurrency traders, who would have provided Ms R with cryptocurrency in return for the money she'd paid. So, Wise said it would not have been permitted to return these funds even if it had acted sooner to recover the money.

Our investigator asked Wise to provide evidence to demonstrate this was the case. In response, it said it had reached this decision due to its established procedure that distinguishes between genuine crypto traders, 'high risk' individuals and scammers.

For genuine crypto-trader accounts, it said they normally see high volumes of transactions, no reports of fraud, recipients being all over the world, and sometimes having references to crypto (e.g. USDT or Binance, for example). And based on the account activity of the individuals Ms R paid, it concluded they were likely to have been legitimate crypto traders.

This is because all the accounts had a high volume of transactions, with unrelated senders and recipients based all over the world. And neither of the accounts had been reported for fraud prior to them being involved in the scam perpetrated on Ms R.

Ms R has also not provided a plausible alternative explanation for why money was

sent to the third-party payees, and neither has she claimed that they were directly involved in the scam either. It would also correlate with all the other payments she made as part of the same scam, which involved purchasing cryptocurrency before it was sent on to the scammer.

As a result, given there is currently no other reasonable explanation, I'm minded to find Wise's explanation (that these were legitimate crypto traders) to be plausible, as the account activity of these third parties would not fit the type of activity usually associated with scam accounts. As a result, these would have been innocent third parties who received Ms R's money in good faith, and which in return they've provided cryptocurrency. I therefore wouldn't have expected Wise to attempt to recover the money from these third parties in such circumstances.

I note that one of the payees ('WWC') wasn't a Wise customer, so it's not possible to determine whether this account fits the same criteria as the other third-party Wise accounts. But it was another international payee, and there's nothing to suggest that the reason for the payments being made to WWC were any different – i.e., to ultimately purchase cryptocurrency to send on to the scammer. And in the absence of any further evidence, I will be proceeding on the assumption that the payments made to WWC were also to purchase cryptocurrency.

Therefore, while there may have been funds remaining in these accounts, I do not think it would be fair and reasonable to ask Wise to refund this. As a result, I'm satisfied its total offer of £550 compensation for failing to act sooner is fair, so I don't intend asking it to pay anything over and above what it has already offered.

I invited further comments and evidence from Ms R and Wise. Both parties accepted my provisional decision and said they had nothing further to add.

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.

Given that both parties have accepted my provisional findings and had nothing further to add, I see no reason to depart from the conclusions set out above in my provisional decision.

I've therefore decided to uphold this complaint.

My final decision

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

- Refund the payments made to payee "LOI" – totalling £12,951
- Pay 8% simple interest per year on these payments from the date they were paid until the date of settlement.
- Pay £550 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 31 January 2024.

Jack Ferris

Ombudsman