

The complaint

Mr P complains that Wise Payments Limited (“Wise”) have failed to refund the money he lost as part of an investment scam.

Mr P has a representative but for ease of reading I will mainly just refer to Mr P.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision.

In summary though, Mr P was contacted by someone who was purporting to be a lawyer for a well-known crypto exchange. I will call the scammer B. B said that it could recover the funds that Mr P lost to a scam 4 years earlier. B said the funds it could recover now were worth over £1,000,000. B told Mr P that he needed to send funds to a crypto exchange to enable the recovery of these funds.

After this Mr P made over 30 debit card payments to two different crypto exchanges totalling over £45,000 in December 2022. My understanding is that the funds were removed from the crypto exchanges by the scammer and Mr P did not have access to these accounts. Mr P asked Wise to refund these payments as he believes Wise should have done more to prevent him from being scammed. Wise did not agree with this.

I issued a provisional decision on 12 April 2024 in which I said the following;

“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 P authorised the disputed payments he made from his Wise account even if he says the payments were made by the scammer on his behalf. The payments were requested by him using his legitimate security credentials provided by Wise, and the starting position is that Wise 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 P from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transaction. For example, if it was particularly out of character.

In this case Wise did not intervene during the scam and I think that it should have. So, I have thought whether an intervention from Wise would have uncovered and prevented the scam. To do this I have considered the answers provided by Mr P in a call that took place during the scam that was with a different firm that Mr P held an account with. This took place when a payment had been prevented by this other firm from being sent to a crypto exchange. I have highlighted the key questions asked and the responses from Mr P:

- *Mr P was asked if the payment was for a crypto investment? Mr P said yes.*

- *Mr P was asked if he had been approached by a third party in relation to this investment? Mr P said no, but he had been approached 4 years ago. He went on to say he does not answer the phone anymore.*
- *Mr P was asked if he was the only one with access to the crypto exchange account? He said that he was.*

Firstly, I should say that this was not a great call and more probing questions should really have been asked. That said, the answers provided by Mr P were misleading. He was not doing a crypto investment and should have answered no to that question. He had been approached by a third party in relation to this transaction when he said he had not. I note that Mr P's representative has highlighted that as he was not doing an "investment" this was an accurate answer. But Mr P should really have been aware that what he was being asked

was if a third party had asked him to make the transaction in question and therefore that the correct answer is that he had been. I think him adding that he does not answer the phone anymore reinforces to the staff member that the payment was on Mr P own behest when in fact it wasn't. Finally, in its submissions, Mr P's representative has clearly stated that Mr P did not have access to the crypto exchange wallets the funds were sent to, yet in the call he said he did and was the only one with access.

So overall I am satisfied that Mr P was giving inaccurate answers to his other current account provider. As this was a bank, he had used for years I find it unlikely that he would have given more accurate answers to Wise had it intervened. So overall I think that had Wise intervened I think it's unlikely that it would have led to the scam being uncovered or the scam stopped. And had it provided a general crypto warning I don't think the scam would have been stopped either. After all, Mr P was provided with a very general warning from the other firm and he continued anyway. Also, Mr P was clearly desperate to recover the funds that he lost and was under the spell of a scammer who was impersonating a legitimate crypto exchange, which Mr P said he and his nephew had researched.

Therefore, even if Wise ought to have done more, I don't think its failure to probe further could reasonably be considered as the proximate cause of Mr P's loss in these circumstances. Based on everything I have seen, it seems likely he would have given misleading information and proceeded to make the transactions irrespective of any intervention.

I've also thought about whether Wise could have done more to recover the funds after Mr P reported the fraud, but debit card payments are not covered by the Contingent Reimbursement Model. Also, a chargeback claim would not have been successful either, as the payments were made to purchase crypto on Crypto exchanges and he got what he paid for.

I appreciate this will likely come as a disappointment to Mr P, and I'm sorry to hear he has been the victim of a cruel scam. However, I'm currently not persuaded that Wise can fairly or reasonably be held liable for his loss in these circumstances".

In response to my provisional decision Wise did not add any further points. Mr P's representatives did raise further points most of which I had already addressed in my provisional decision. But in summary it said.

- That the other firm should have asked more open-ended questions and had Wise intervened and done so the scam would have been uncovered
- That Mr P was not answering questions in a misleading manner

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.

I remain of the opinion that Mr P was deliberately answering questions in a misleading manner to the other firm.

He was asked if he was doing a crypto investment he confirmed that he was. I note that this question was not open ended but there was no reason why Mr P could not have said what he was actually doing which, was sending funds to a crypto exchange to recover funds he had already lost. Or at the very least just say no.

He was also asked if was dealing with a third party as part of his investment he said he was not. I note Mr P's representatives' comments that as the question was whether he was dealing with a third party in relation to an investment him confirming that he was not was an accurate answer as he was not doing an investment. But if this was why Mr P answered the question this way, why did he agree that he was doing an investment in the first place. Reasonably I think that Mr P should have been aware of what he was being asked which was whether a third party was involved in the transaction in question. I also remain of the opinion that Mr P followed up by saying he had dealt with a third party before years ago but now he does not answer the phone which seems to me to be an attempt to reinforce that he was not dealing with a third party. Why would he add that in unless it was to highlight that he could not be dealing with a third party now as he does not answer the phone.

Finally, Mr P was asked whether he had sole access to the crypto wallet in question. Mr P said he was, which was incorrect as he has said the scammer had control of them. Mr P's representative has highlighted that Mr P thought he had sole access to the wallets so that was an accurate answer. But this in contradiction to what was stated in its initial submissions, that Mr P was unaware of the crypto wallets that they were opened without his knowledge by the scammer and he initially did not agree to the funds being sent to them or indeed from them to the scammer. So, I can't see how, given the above, that he thought he was the only one with access to the crypto wallets.

So overall I am satisfied albeit on balance that Mr P misled the other firm and given this I think he would have done the same had Wise intervened. I think that this would have led, at most, to Mr P being given a general crypto warning and I don't think that this would have stopped Mr P in carrying on with the transactions in question. So, whilst I think that Wise should have intervened more than it did, I don't think that the scam would have been stopped.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 May 2024.

Charlie Newton
Ombudsman