

The complaint

Mr P complains that Wise Payments Limited won't refund money he lost when he was a victim of a crypto investment scam.

Mr P is being supported by a representative, but for ease, I'll refer to Mr P throughout this decision.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

Mr P says that around April 2023 he was introduced to a crypto investment by a friend. The investment was via a company (which I'll refer to here as 'C'). Mr P says his friend had been investing with 'C' for a while and had made a profit. And because Mr P wanted to supplement his income, he decided to invest.

Mr P said he was assigned an account manager (Mr J). Mr P said Mr J was very professional and convincing and introduced him to promotional investments; as well as allowing his mother to become part of the investment scheme as well.

Mr P said Mr J helped him open a trading account, providing access to a trading portal that he said he was *'extremely impressed with ... due to its detailed and technical nature'*. And that he assumed only legitimate companies would have access to such sophisticated software.

Mr P also opened an account with a legitimate crypto exchange (which I'll refer to here as 'M').

Mr P made the following card payments to as part of the scam, via 'M'.

Date	Amount
30 April 2023	£3,650
1 May 2023	£1,090
8 May 2023	£2,499
10 May 2023	£3,550
	£10,789

Wise didn't intervene in any of the payments.

When Mr P was unable to withdraw his funds, he contacted Wise who tried to recover the funds by way of a Visa Chargeback claim. But this was unsuccessful.

Mr P complained to Wise. In short, Wise said Mr P had authorised the payments and it didn't consider itself to be responsible for his loss.

Mr P then referred his complaint to the Financial Ombudsman. He said Wise should've intervened in the payments – and that if it had – his loss would've been prevented. Mr P wanted Wise to refund the lost funds, together with 8% interest and £300 for the distress and inconvenience caused.

One of our Investigators considered the complaint but didn't uphold it. In summary, she said Wise should've intervened in the first and last payments by providing Mr P with a tailored written warning about risks associated with crypto investment scams. But she didn't think this would've resonated enough with Mr P to have prevented his loss.

Our investigator also thought there was nothing Wise could do to recover the lost funds. And she didn't think there was any justification for Wise to provide Mr P with compensation.

Mr P disagreed and asked for his complaint to be reviewed by an Ombudsman. The matter has therefore been passed to me to decide.

Mr P said that Wise, as an electronic money institution (EMI), should be held to the same standards as banks, and should've spoken to him about the payments – not just issued tailored written warnings. And that if it had, the scam would've been uncovered, and his loss prevented.

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.

But first, I would like to say at the outset that if there is a submission I've not addressed; it isn't because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Wise was responsible for Mr P's loss.

I should also add that where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

As a starting point, Mr P doesn't dispute that the payments were made in line with his instructions to Wise. In broad terms, the starting position in law is that an EMI, such as Wise, is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

However, I consider that as a matter of good industry practice that Wise ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to fraud or a scam.

At the time these payments were made losses related to crypto investment scams was increasing. As such, I'd expect all firms, including EMIs, to recognise that crypto related transactions carry an elevated risk of the likelihood of the transactions being linked to a fraud or scam.

The question then arises whether Wise ought reasonably to have held such suspicions or concerns in relation to Mr P's payments — and if so, what might have been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if Wise acted fairly and reasonably in its dealings with Mr P when he made the payments. Specifically, whether it should've done more than it did before processing the payments – and if it had, would that have made a difference. I also need to decide if Wise could've reasonably recovered the lost funds.

Should Wise have intervened in the payments?

It would've been clear to Wise that the first payment was being made to a crypto exchange ('M'). In circumstances such as this, I'd expect Wise to have provided Mr P with a tailored written warning specific to crypto investments scams.

The next two payments were more in line with Mr P's normal account activity – and were a week apart. So, I don't think Wise would've had reason to identify these payments as suspicious.

But I agree that Wise should've again issued a tailored written warning about crypto investment scams to Mr P when he made the last payment – given the fact he'd transferred over £6,000 in two days – both in relation to crypto. And by this time, he'd made four payments to 'M' within a relatively short period of time – something that can be a hallmark of a crypto investment scam.

Mr P's main point is that a tailored written warning wasn't enough, and that Wise should've spoken to him to understand the true nature of the payments he was trying to make.

So, I've thought next about whether Wise ought to have taken further steps beyond providing those tailored written warnings to Mr P in relation to the first and last payments. When considering this, I've kept in mind that EMIs process high volumes of transactions each day, and that there is a balance for Wise to find between allowing customers to be able to use their account and questioning transactions to confirm they're legitimate.

Looking at the first payment, whilst the amount is higher than payments made by Mr P in the previous six months, it's not a significantly high amount in financial terms. And I must bear in mind that it isn't unusual for a customer to make a larger than normal payment to a new payee as part of a normal operating account.

It's also relevant to point out that Mr P had made payments to a different legitimate crypto exchange in November 2022 and in March 2023 – and received funds from another crypto exchange in April 2023. None of which were related to the scam. This activity would make the payments to 'M' seem less out of character and suspicious.

By the time of the last payment, there was a pattern of payments emerging that had the hallmarks of a crypto investment scam – hence why I think Wise should've presented Mr P with another tailored written warning before this payment was processed. But as I've mentioned above, Mr P's account had, by this time, been used to purchase crypto from three legitimate crypto exchanges – making the last payment appear more in line with normal account activity.

Taking all this into account, I don't think the first and last payments Mr P made to 'M' were so unusual or suspicious whereby I would've expected Wise to have been concerned that Mr P was at significant risk of financial harm from fraud. Because of this, I wouldn't have expected Wise to have carried out additional checks before processing them.

I'm therefore satisfied the tailored written warnings about the risks of crypto investment scams that I believe Wise *should've* presented were appropriate and proportionate to the risk that should've been identifiable to Wise at the time the first and last payments were made.

Would intervention by Wise have prevented Mr P's loss?

For me to find it fair and reasonable that Wise should refund the payments to Mr P, requires more than a finding that it should've done more to intervene when the payments were made. I would need to find not only that Wise should've intervened where it ought reasonably to have done so – but crucially, I'd need to find that but for this failure the subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by Wise wouldn't have revealed the payment(s) were part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented them from being made.

I've thought very carefully about this point and taken account of all the wider surrounding circumstances to decide, on balance, what is most likely to have happened if Wise had

provided Mr P with tailored written warnings specific to crypto investment scams before processing the first and last payments. And on doing so, I'm not persuaded that this would've made a difference and prevented Mr P's loss. I'll explain why.

Firstly, it's not for me to dictate what Wise's tailored written warning should've looked like – but I'd expect it to include information specific to crypto investment scams. This could include things like; how the investment came about, doing research into the investment company, whether there was pressure to invest, and whether there was a third party or broker involved. I've thought about these points in turn and how they are likely to have resonated with Mr P.

Mr P wasn't contacted about the investment by chance. It had been his choice to invest in crypto via 'C', having invested previously in crypto by himself, and received returns.

Nor was Mr P pressured into the investment. He's explained to us that he was introduced to the investment by a friend who had invested with 'C' and received returns. Mr P told us that:

'I was updated by my friend ... once or twice a week for about 6 weeks, before I invested'.

And so, Mr P had plenty of time to think about the decision to invest, and to carry out any checks before making the first payment, or if he'd been prompted to do so by Wise by way of the tailored written warning. But I think it's unlikely that those checks would've given Wise, or Mr P, any reasonable cause for concern. From what I can see, 'C' is a genuine investment company that the scammer was impersonating to facilitate the scam. There are no regulatory or other online warnings about 'C' to indicate it is any other than genuine.

There was a third party involved in the investment (Mr J). But I can see from the messages between Mr P and Mr J that Mr P had complete trust in Mr J – seeking advice and reassurance to fully understand how the investment worked. And when Mr P had some initial concerns that his first deposit wasn't showing on his trading account – Mr J quickly reassured him that logging back in would resolve the issue – which it did.

Furthermore, on the 30 April 2023 – the date of the first payment – Mr P was so convinced by the investment that he asked Mr J how his mother could become involved, including signing up for the recent promotion opportunity. Mr P, with the help of Mr J, then guided Mr P's mother through the investment process.

I can also see from the messages between Mr J and Mr P that he was completely under the spell of the scam – and never doubted Mr J when he told him that he needed to make further payments to enable him and his mother to benefit from the promotion opportunity. And Mr P was keen to invest more, asking Mr J on 7 May 2023:

'Will it be possible for me and my mum to be placed on the £4000 promotion plan?'

On 8 May 2023 Mr P asked Mr J about making a withdrawal, at which point he discovered he had to deposit funds to allow this to happen and to verify his identity. Having to make payments to facilitate withdrawals is a clear hallmark of a scam. But Mr P was told the fee was refundable, and from the information I've seen, he never questioned the legitimacy of the investment at this time – rather he was more concerned at the fact that he was unaware there was a withdrawal limit, and that there were fees to pay. Mr P then followed Mr J's advice about borrowing money to cover the withdrawal fee (the £3,550 10 May 2023 payment).

It wasn't until 13 May 2023 (three days after the last payment), when Mr P was asked to pay a further £5,000 to make the withdrawal, that he began to think something wasn't right. And yet he continued to engage with Mr J, who again reassured him that his money was safe and discussed the possibility of him covering part of the £5,000 on Mr P's behalf. On 18 May 2023 Mr J agreed to cover £1,500 and Mr P said:

'I will try to get another loan of £3500.'

Mr P then confirmed to Mr J that he would pay the full withdrawal amount, but when the loan wasn't forthcoming, this didn't happen.

On 31 May 2023 Mr P told Mr J that he had obtained some 'legal advice'. But Mr P still believed the investment to be genuine. He tells Mr J that he is entitled to his money back, and says to Mr J that:

'I will have to take matters further if I am not paid out'.

Mr P says to Mr J on 7 June 2023 that he thinks the investment is a scam. But Mr J disputes this, and Mr P continues to communicate with Mr J until January 2024 in an attempt to recover his money.

All this suggests to me that it's more likely than not Mr P would've proceeded with the first and last transactions – even if Wise had alerted him, by way of a tailored written warning about crypto investment scams, to the risks involved and the checks he should make. Mr P was clearly fully invested in the process – and the evidence I've seen suggests to me that *any* concerns Mr P might've had on receiving warnings from Wise are more likely than not to have been allayed by Mr J or by the friend who introduced Mr P to the investment.

Taking all this into account, I'm not persuaded that a proportionate intervention from Wise at the point of the first or last payments would've likely prevented Mr P's loss.

Did Wise do enough to try and recover the lost funds?

I've considered whether Wise could reasonably have done anything more to recover Mr P's losses, but I don't think it could.

Mr P's payments were made to 'M', a legitimate crypto exchange, rather than to the scammer directly. As such, I'm satisfied any attempt to dispute the transactions through the card scheme would've been successfully defended by 'M', on the basis that it provided the service Mr P paid for – the exchange of money into crypto. So, I don't think there was any prospect of Mr P recovering his money this way.

I have a great deal of sympathy for Mr P and the loss he's suffered, as I appreciate it is a significant sum of money to him. But it would only be fair for me to direct Wise to refund his loss if I thought it was responsible – and I'm not persuaded that this was the case. For the above reasons, I think Wise has acted fairly and so I'm not going to tell it to do anything further.

My final decision

My final decision is that 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 5 September 2024**.

Anna Jackson
Ombudsman