

The complaint

Mr W is unhappy Wise Payments Limited will not refund the money he lost to an investment scam.

Mr W brought his complaint through a representative, for ease of reading I will refer solely to Mr W in this decision.

What happened

As both parties are familiar with the details of the scam I will not set them out in full here. In summary, on 3 October 2022 Mr W made a faster payment of £18,772 to invest in company F. He had met the owner and received strategy pitches explaining the opportunity and the firm's expansion plans. He received a shareholder agreement from the company's lawyer. After discussion with other investors Mr W later realised he had been scammed and the money had likely been used to clear personal debts of the two directors. His representative contacted Wise to make a refund claim on 12 January 2024.

Mr W says Wise fails to protect him and his money as it should have. Wise says it was Mr W's responsibility to check the legitimacy of the recipient before making the payment. It cannot be held liable for when a loss occurs as a result of fraudulent behaviour on behalf of the recipient after a payment has been made.

Our investigator did not uphold Mr W's complaint. He said whilst Wise has not disputed that Mr W was the victim of an investment scam, it is debateable. However, even accepting it was a scam he cannot conclude Wise is liable for Mr W's loss. He said it ought to have intervened but he did not think this would have prevented the loss. And when Wise contacted the receiving bank no funds remained.

Mr W disagreed with this assessment and asked for an ombudsman's review. He said, in summary, it was definitely a scam and an intervention from Wise could have prevented his loss. There were multiple red flags: an entry at Companies House does not mean an opportunity is legitimate; IPOs (Initial Public Offering) are not run on cryptocurrency platforms; and the projected returns were too good to be true.

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.

The first question we typically look to resolve in cases such as these is whether the company involved, so here company F, was actually operating a scam.

Not every complaint referred to us as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in very disappointing returns or losses. Some companies may have offered opportunities, like the one here, which were not regulated by the FCA—using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

Wise is an Electronic Money Institution (EMI) and at the time the payment 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 Financial Conduct Authority'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. But when simply executing authorised payments, it does not have to protect customers against the risk of bad bargains or give investment advice.

Company F was registered on companies house at the time until being dissolved on 30 January 2024 and I haven't seen any evidence to suggest it was a scam at the time from other sources. I note Mr W's comments about some irregularities in the listing but that doesn't negate the fact it existed. I am not aware of any police investigation into Company F. However, all that said, I don't need to make a conclusive finding into whether Mr W's investment was part of a scam in order to consider whether Wise ought to have identified Mr W's payment as out of character, and therefore intervened before processing it. And if so, I then need to decide had it done so what would the most likely outcome have been.

There's no dispute that Mr W made and authorised the payment. Mr W knew why he was making the payment. At the stage he was making this payment, he believed he was investing in a flour, bakery and agro-production company. I don't dispute Mr W didn't receive what he thought he would, but I remain satisfied the transaction was authorised under the Payment Services Regulations 2017.

It's also accepted that Wise has an obligation to follow Mr W's instructions. So in the first instance Mr W is presumed liable for his loss. There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Wise also has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm. To note, as Wise is not a signatory to the Contingent Reimbursement Model the principles of that code do not apply in this case.

Did Wise do what to should have to protect Mr W?

I think the payment was unusual for Mr W's account activity and Wise has not disputed this. And given the value and currency relative to his typical transactions I think Wise needed to

make a direct intervention. I find it should have contacted Mr W to ask for some detail about the payment before processing it.

This means I need to decide if Wise's intervention would have made a difference to Mr W's decision to send the payment. On balance I don't think it would. I say this based on the questions Wise should have asked to discover the basic context of the payment, and given the features of investment scams at the time – but taking into account that it had no duty to give investment advice.

At this time investment scams were often characterised by receiving the opportunity to invest via a cold call or an unsolicited offer, with significant pressure applied to 'act now', and by promised rates of return that were too good to be true.

Here, Mr W had met the owner of the company in the location of the development opportunity overseas. He had received a detailed shareholder agreement and advance subscription agreement, notarised by a UK lawyer. He had copies of strategy pitches, shareholder listings, press kits and the company structure. So I think Mr W would have been able to plausibly answer a proportionate level of questioning from Wise.

He has mentioned some red flags Wise ought to have spotted. He says the fact DigiShares was mentioned for the IPO ought to have raised alarm bells, but I would make two comments here. I am unsure if proportionate questioning would have revealed that level of detail. But even if it had, I can see from the WhatsApp messages between Mr W and one of the directors that they had in fact talked about an STO (security token offering) on DigiShares as a 'listing' mechanism, not an IPO. This is a legitimate way for start-ups to raise capital in return for equity or revenue-sharing tokens and a service DigiShares offers.

Mr W also argues that the investment was not regulated, but there is not a requirement for this type of investment to be authorised by the FCA. He was investing in a flour/bakery company, not a financial product. So the fact company F was not regulated would not have caused Wise any particular concern. I accept that a ten-fold return was high, but given all the other context I am not persuaded this fact in isolation would have stopped Mr W going ahead, had it been flagged.

In the round, I don't think a proportionate level of questioning by Wise would have led it to conclude Mr W was at risk of financial harm and that it should not process the payment. Or that it would have created uncertainty in Mr W's mind that would have led him to change his decision to invest.

I have then thought about whether Wise did what this service would expect to recover the funds once Mr W made a claim in 2024. Given the length of time that had passed I'm satisfied that recovery from the receiving bank was a not a viable option, irrespective of how quickly Wise contacted it. I can see, notwithstanding the time that had passed, it did attempt recovery in 2024 but no funds remained.

It follows for the reasons set out above I cannot fairly hold Wise liable for Mr W's loss.

My final decision

I am not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 February 2025.

Rebecca Connelley
Ombudsman