DRN-5663520

The complaint

Mr I is unhappy Wirex Limited won't refund payments he sent as part of a scam.

Mr I brings his complaint via professional representatives, but for simplicity I've referred to the actions of Mr I throughout this decision.

What happened

In 2023 Mr I saw an advert online for a cryptocurrency investment opportunity, offered by a company I'll call "B", and endorsed by a celebrity. He left his details via an enquiry form, and was contacted by brokers – who showed him a professional looking platform and website. Having been persuaded to invest, Mr I went through some onboarding checks with B – and was told he'd need to send cryptocurrency to the platform to be traded. The brokers advised him to open an account with Wirex to facilitate the exchange of his funds into cryptocurrency.

On 27 and 28 July 2023, Mr I made the below transactions on his Wirex account as part of the scam. The conversion of the money into cryptocurrency involved Wirex sending the funds to a separate entity abroad, which provided the cryptocurrency services, and that sending constituted a payment service. I've also included the fee charged for the exchange.

Date	Time	Type	Amount
27 July 2023	12.49	Deposit into Wirex account	£1,000
27 July 2023	12.50	Exchange of GBP to cryptocurrency	£985.22 (+ £14.78 fee)
27 July 2023	13.06	Deposit into Wirex account	£4,000
27 July 2023	13.07	Exchange of GBP to cryptocurrency	£3,940.88 (+ £59.12 fee)
27 July 2023	13.16	Deposit into Wirex account	£2,200
27 July 2023	13.16	Exchange of GBP to cryptocurrency	£2,167.48 (+ £ 32.52 fee)
28 July 2023	21.40	Deposit into Wirex account	£1,700
28 July 2023	21.41	Exchange of GBP to cryptocurrency	£1,674.87 (+ £25.13 fee)

When Mr I tried to withdraw his profits he couldn't without paying a substantial fee, which prompted him to do some further digging into B. He subsequently found the warning issued by the Financial Conduct Authority (FCA), and that's when he realised he'd been scammed. Mr I reported the matter to Wirex in August 2023, and complained that he wasn't shown any warnings prior to making the transactions. Wirex responded to say Mr I had authorised the activity so it wasn't liable.

Mr I wasn't happy with the response and so referred the complaint to our service for review. Wirex disputed our service had jurisdiction to consider the matter, as cryptocurrency withdrawals weren't regulated by the FCA. One of our investigators thought aspects of what happened did fall within our remit, particularly the regulated activity on the e-money account. In the investigator's view, Wirex ought to have provided a cryptocurrency investment scam warning prior to sending the £4,000.00 Mr I deposited to the external crypto currency exchange, and that transaction was a payment service we could review.

The investigator thought that Wirex ought to have been concerned at that point Mr I was at risk of financial harm from fraud because:

- While Wirex didn't know what typical account usage was, as it had just been opened, there were two requests in a short time to send increasingly large amounts to the external cryptocurrency exchange, totalling £5,000. The amounts involved and the pattern of spending was an indication Mr I might be falling victim to a scam.
- Losses to cryptocurrency fraud reached record levels in 2022, and by the end of 2022 many high street banks had placed restrictions or additional friction on cryptocurrency purchases owing to the elevated fraud risk. So, by July 2023, when these transactions took place, the investigator thought Wirex should have recognised that payments to cryptocurrency carried a higher risk of being associated with fraud.
- Even though the payments were going to wallets at a cryptocurrency exchange in his name, Wirex ought to have been aware of the prevalence of 'multi-stage fraud', particularly involving cryptocurrency (where scammers convince victims to pass funds through one or more of their own accounts before ending up in an account not under their control, to evade detection).

The investigator thought the proportionate response to the risk presented (by sending £4,000 to a cryptocurrency exchange) would have been to provide a warning that was specific to the main cryptocurrency scam risk at the time – cryptocurrency investment scams. She thought a tailored warning would have highlighted common features of those scams, like social media adverts (often with celebrity endorsements), third party brokers that aren't FCA regulated pressuring you to send increasing amounts, promises of guaranteed or high returns, as well as convincing looking platforms that you can't withdraw from (without demands for large withdrawal fees/charges upfront). The warning also would have stressed the importance of conducting research on the company, to check it is FCA registered if offering investment advice, and to see if there are any scam warnings up about it.

Mr I's circumstances were so stereotypical for one these scams, that the investigator thought a warning along the lines described would have really resonated with him – and caused him to conduct the research earlier (and discover the FCA warning) that he later did. The investigator said she considered whether Mr I had acted negligently, to the point where he should share liability for his loss, and she didn't think he had. She said the website and information about the investment he was given by the scammer at the start meant she didn't think he would have been reasonably prompted to do any extra research at that point. The onboarding process and knowledgeable brokers would also have been reassuring, as well as the convincing looking platform showing his live trades. In the investigator's view, Mr I started investing cautiously with smaller amounts – and became suspicious enough to conduct further checks at the first big red flag (the large withdrawal fees being asked for). So, overall, the investigator concluded Mr I hadn't acted with sufficient negligence to warrant a reduction in the award – and recommended Wirex refund the losses from when the £4,000 was sent to the cryptocurrency exchange.

Wirex didn't agree with the investigator's opinion, and requested an ombudsman reconsider the complaint. Initially Wirex maintained its position the complaint wasn't one we could consider – but after I explained the activities we could look at, it agreed we had authority to review whether it should have done more to prevent the scam on the e-money account. I then set out my provisional thoughts that I agreed with the investigator's view, that a warning should have been given prior to sending £4,000.00 to the external cryptocurrency exchange. I explained that a scam pattern had emerged by then and the amounts were concerning enough to warrant an intervention (i.e. showing him a tailored cryptocurrency investment scam warning). I also agreed a warning would likely have resonated and prevented the loss from that point, again for the same reasons the investigator gave. I didn't find that Mr I had acted with sufficient negligence to warrant a reduction in the award either.

Wirex did not accept my provisional thoughts. In summary, it said:

- There is case law relevant to determining the duty of care owed to its customers – and that said "*'If a duty of care is deemed to be owed then it must then be established that a breach of that duty has occurred. A breach will be demonstrated if the defendant's actions are deemed to fall below the standard of care which is regarded as appropriate to the duty owed*".
- Mr I had agreed to abide by the terms, which contain provisions to cover the risks of engaging in cryptocurrency activity.
- It wished to draw my attention to the following terms particularly - *'if you do not agree to these terms do not use our service*' and *'Do not buy cryptoassets if you do not accept the risks associated with cryptoassets*,' and *'You must make sure the details and address of the crypto wallet that you provide to us when you withdraw any cryptoassets are correct. You will not be able to reverse a transfer of cryptoassets that you have initiated through the Wirex Service. Transferring cryptoassets to the wrong address could mean that those cryptoassets will be permanently lost*.'
- In light of the information it gave about the controls it has in place, and that Mr I was in full control of his own account, it disagreed that he had no responsibility in what happened.
- Given the lack of risk warning provided at the time of the payments Wirex agreed to refunding 50% of the loss.

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.

Having done so, I'm upholding Mr I's complaint – for the same reasons the investigator gave, and as I set out in my provisional thoughts. Wirex's further submissions haven't persuaded me to depart from the conclusions I reached.

Wirex has mentioned its duty towards Mr I, and (in broad terms) the starting position in law is that a payment services provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account and the Payment Services Regulations (PSR's). Mr I 'authorised' the transactions in question (he made them), albeit under the belief they were for a legitimate investment opportunity. So Wirex were under an obligation to process the payments to the cryptocurrency exchange – but that isn't the end of the story, as far as Wirex's responsibility in the matter goes.

While that's the starting position, I've also taken into account the regulator's rules and guidance; relevant codes of practice, along with what I consider to have been good industry practice at the time. We detail the basis of the longstanding regulatory expectation to monitor for signs of fraud on our website, so I won't repeat that here. I've also applied Wirex's terms for the account, which said it could refuse to complete transactions where it suspected fraud. Those together mean I consider Wirex should fairly and reasonably have been on the lookout for the possibility of Authorised Push Payment (APP) fraud at the time, and intervened if there were clear indications its customer might be at risk.

Wirex has a difficult balance to strike in how it configures its systems. It needs to detect unusual activity, or activity that might otherwise indicate a higher than usual risk of fraud, whilst not unduly hindering legitimate transactions. There are many millions of payments made each day, and it would not be possible or reasonable to expect firms to check each one. In situations where firms do (or ought to) carry out checks, I would expect that intervention to be proportionate to the circumstances of the payment.

I don't have anything further to add to the detailed explanations given by the investigator as to why a warning ought to have been given (prior to sending over the £4,000 to the foreign cryptocurrency exchange), or the reasons for why that would have resonated with Mr I – meaning further loss would have been prevented from that point. I don't think the terms Wirex has pointed to, vaguely warning about the hazards involved with cryptocurrency, were a sufficient substitute for a tailored scam warning at the point the risk of financial harm materialised. I also agree with the investigator's rationale for why Mr I didn't act negligently too. Though the returns he would have been seeing on the platform would have been very high for the short time his funds were invested (which ought to have been a red flag), I don't think that one missed factor means he should share responsibility for the loss in the circumstances. Wirex's argument that the account was under Mr I's control at the time also doesn't necessarily point to his negligence – he was the unwitting victim of a cruel and sophisticated scam, and his actions must viewed in that light.

I've thought about whether Wirex could have done more to recover the loss when alerted to the scam, and I'm satisfied it couldn't have. The money was converted and withdrawn after it was sent on from the e-money account, and the cryptocurrency withdrawals weren't reversible. There was a time gap between Mr I making them and reporting the matter too, which made recovery unlikely anyway (as scammers tend to move funds on quickly). I've also not seen any service issues that I think would warrant further compensation. I appreciate Mr I was frustrated with the service he received, but I think Wirex tried to help when it was notified of the scam, but his own confusion about had happened made it difficult for Wirex to do more in a quicker time. I consider the interest I've awarded will compensate him sufficiently for the time he was deprived of the use of those funds.

Putting things right

For the reasons I've explained, I'm directing Wirex to put right the complaint by:

- Refunding the amount withdrawn in cryptocurrency to the scammer after the £4,000 payment was sent to the cryptocurrency exchange (the loss resulting from the failure to provide a scam warning at the point I've said it should have). That includes any charges applied to the converted amounts, less anything sent back to him since. The refund amount should be the equivalent in pounds of the cryptocurrency sent, with the exchange calculated on the day of the loss (not based on the value of the cryptocurrency today).
- Applying 8% simple interest yearly to that refund amount, calculated from the date of loss until the date of settlement. If Wirex considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr I how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is I uphold Mr I's complaint about Wirex Limited and direct it to settle the dispute as I’ve set out above (in the ‘putting things right’ section).

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr I to accept or reject my decision before 10 September 2025.

Ryan Miles
Ombudsman