

The complaint

Mr B complains that Wise Payments Limited (Wise) is refusing to refund him the amount he lost as the result of a scam.

Mr B is being represented by a third party. To keep things simple, I will refer to Mr B throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, in August 2022 Mr B was looking for an investment in cryptocurrency, he saw an advertisement on Facebook for a business called cryptoportfolio.pro. (X) and after carrying out some online searches responded to it.

Mr B was required to provide identification documents and download the screen sharing application AnyDesk. X then helped Mr B by opening an account with X, and a separate account with Binance. Mr B also opened an account with Wise as instructed by X.

After making an initial small investment of £250 Mr B had made a profit and X asked if he wanted to make further investments. Mr B said he didn't want to invest any further and all communication between them ceased in October 2022.

At this stage Mr B felt he had fallen victim to a scam.

In January 2023 Mr B was contacted by someone he thought to be related to his investment with X. Mr B was told everything with the previous investment had stopped due to technical issues, he was told he had made a significant profit and he would have to make further payments to make a withdrawal. Mr B made the payments as instructed.

On 3 February 2023 Mr B asked the business who he was dealing with and was told Vanguard (Y), a different business to that he had initially invested with, yet he continued to make a second payment as instructed by Y.

Mr B didn't receive the withdrawal despite making the payment and it was clear Mr B had fallen victim to a scam.

Mr B made the following payments in relation to the scam from his Wise account:

<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
1 February 2023	Binance	Debit Card	£3,800
7 February 2023	Binance	Debit Card	£5,000

Our Investigator considered Mr B's complaint and thought it should be upheld in part. Mr B disagreed, so this complaint has been passed to me to decide.

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.

It has not been disputed that Mr B has fallen victim to a cruel scam. The evidence provided by both Mr B and Wise sets out what happened. What is in dispute is whether Wise should refund the money Mr B lost due to the scam.

Recovering the payments Mr B made

Mr B made payments into the scam via his debit card. When payments are made by card the only recovery option Wise has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr B was dealing with the scammer, which was the business that instigated the scam. But Mr B didn't make the debit card payments to the scammer directly, he paid a separate cryptocurrency exchange (Binance). This is important because Wise was only able to process chargeback claims against the merchant he paid (Binance), not another party.

The service provided by Binance would have been to convert or facilitate conversion of Mr B's payments into cryptocurrency. Therefore, Binance provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr B paid. As Binance provided the requested service to Mr B any chargeback attempt would likely fail.

Should Wise have reasonably prevented the payments Mr B made?

It has been accepted that Mr B authorised the payments that were made from his account with Wise, albeit on Y's instruction. So, the starting point here is that Mr B is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Wise should have been aware of the scam and stepped in to warn Mr B about the payments he was making. And if it had warned Mr B, would it have been able to prevent the scam taking place.

The first payment Mr B made related to the scam was substantial compared to his usual spend and was being made to a cryptocurrency platform. I think that given Wise's knowledge of how cryptocurrency scams worked around the time this payment was made, Wise's fraud prevention systems should have been triggered and it should have provided a tailored written warning relevant to cryptocurrency investment scams to Mr B.

Mr B was experiencing a common scam and I think the tailored warning would likely have stopped him in his tracks causing the scam to be uncovered and preventing the payments from being made. So Wise is responsible for the payments Mr B made into the scam.

Did Mr B contribute to his loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances, I do think it would be fair to reduce compensation by 50% on the basis that Mr B should share blame for what happened. Following the initial small investment Mr B was contacted several months later to be told he had to pay over £8,000 to release his profits which I assume were more than this amount. I think this kind of profit was excessive (too good to be true) and should have rung alarm bells for Mr B especially as he already thought he had been scammed several months earlier.

In addition to this Mr B didn't ask Y the name of the business until after he made the first payment to it. I think it would be reasonable to expect Mr B to at least checked who he was taking instructions from when making such a significant payment. When Mr B found out he was dealing with a different business he went onto make a second payment without carrying out further research to check if the two businesses were linked an any way, which they weren't.

Putting things right

To put things right I require Wise Payments Limited to:

- Refund the payments Mr B made into the scam less 50%
- Pay 8% simple interest on this amount, calculated from the date of loss to the date of return (less any lawfully deductible tax)

My final decision

I uphold this complaint and require Wise Payments Limited to do what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 March 2024.

Terry Woodham
Ombudsman