

The complaint

Mr H complains that Wise Payments Limited didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr H was researching cryptocurrency investments online when he came across a company which I'll refer to as "M". The advert featured a celebrity endorsement which reassured him the opportunity was legitimate and he noted M was registered on Companies House and had good reviews.

He completed an online contact form and was contacted by someone I'll refer to as "the scammer" who introduced himself as Mr H's account manager. The scammer said his role was to provide advice and ensure he made a profit and explained that the more he invested the more money he'd make.

The scammer advised Mr H to download 'AnyDesk' remote access software and helped him to set up an account, navigate the platform, and make a withdrawal. He also told him to open an account with Wise and told him to first purchase cryptocurrency through a cryptocurrency exchange company and then load it onto an online wallet. Between 21 February 2023 and 4 April 2023, he made twelve faster payments from his Wise account to two cryptocurrency exchange companies totalling £44,981. The final payment of £11,988 was returned to the account when he reported the scam.

Mr H could see his investment growing on the trading platform and remained in close contact with the scammer who pressured him to invest more. He realised he'd been scammed on 4 April 2023 when he decided he wanted to make a withdrawal, but he was told by the scammer that he'd need to pay £20,000 for AML checks.

Wise accepted Mr H had been scammed and offered to refund 50% of the payments he made from 31 March 2023 onwards. It explained the payments were authenticated by 3DS, and payments to investment accounts are generally considered to be completed once the funds are loaded to the account, so there were no chargeback rights. And its attempts to recall the funds were unsuccessful.

It said the first six payments weren't unusual because they were to a legitimate cryptocurrency merchant with an overall low fraud score, and there was no account history to compare the payments with. So, it had no reason to believe the payments could be potentially fraudulent. However, it said it should have intervened on 31 March 2023 when Mr H transferred £5,000 to T because this was the second outbound transfer of £5,000 in 24 hours. It accepted the loss could have been prevented and it offered to refund the money Mr H had lost from that point onwards, less 50% for contributory negligence. It also accepted it didn't respond to his claim in a timely manner and offered him £50 compensation.

Mr H wasn't satisfied and so he complained to this service with the assistance of a representative who argued he should be given a full refund. They said Mr H was transferring large sums of money to cryptocurrency merchants which was highly unusual activity. Wise should have asked him why he was making the payment, whether he'd done any research, whether he'd been predicted unrealistic returns and whether he'd made any withdrawals, and as he hadn't been coached to lie, he'd have explained he'd been acting under the instruction of a cryptocurrency trader and the scam would have been detected.

Our investigator recommended that the complaint should be upheld. She explained the first two payments were low value and so she wouldn't have expected Wise to intervene. But she thought it should have intervened when Mr H made the third payment because it was a large payment to a cryptocurrency merchant. She said it should have given Mr H a tailored written warning relevant to cryptocurrency investment scams listing the typical features of this type of scam. And as Mr H had responded to an advert with a celebrity endorsement and used AnyDesk, she thought a warning would have made a difference. So, she thought Wise should refund the money he'd lost from the third payment onwards.

She didn't think the settlement should be reduced for contributory negligence because she accepted the scam was sophisticated and Mr H was being guided by a someone who he believed to be an expert. He thought he'd carried out due diligence as he'd checked on Companies House and seen positive reviews online, so he was satisfied the investment was legitimate. Finally, she was satisfied the offer of £50 compensation for the delay in responding to the claim was fair.

Wise has asked for the complained to be reviewed by an Ombudsman. It doesn't accept the third payment was significant enough to raise suspicion explaining that when Mr H opened the account, he indicated it would be used for investment purposes, and there was no account history to compare the payments with. It has noted that the second payment that day meant Mr H had transferred £8,000 in a single day, so it has offered to refund 50% of the payments from the fourth payment onwards.

It has also argued that Mr H was investing substantial amounts of money in a website endorsed by a celebrity, and so he should have done more thorough due diligence. And if he'd done more research, he'd have seen several warnings about the celebrity endorsement, and negative reviews about M.

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've reached the same conclusion as our investigator. And for largely the same reasons.

I'm satisfied Mr H 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr H is presumed liable for the loss in the first instance.

There is an FCA warning dated 15 June 2023, so I'm satisfied M was operating a scam. But although he didn't intend his money to go to scammers, he did authorise the disputed payments. Wise is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may

sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

Wise is an emoney/money remittance provider and at the time these events 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 FCA'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.

Wise accepts it missed opportunities to have prevented Mr H's loss and it has offered to refund Mr H from the fourth payment onwards. There was no account history to compare the payments with, and there would have been no reason for Wise to intervene in either or the first two payments because they were low value. But I agree with our investigator that even though Mr H had disclosed that he intended to use the account for investments, the third payment ought to have been flagged because it was a high-value payment to a cryptocurrency merchant from a newly opened account. So, I agree with our investigator that Wise ought to have presented Mr H with a tailored cryptocurrency warning. And as there were red flags present including third party involvement, a celebrity endorsement, and the use of remote access software, I think it's likely he'd have realised he was being scammed, conducted additional due diligence and, ultimately, decided against making any further payments.

Contributory negligence

I accept there's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence but, in the circumstances, I don't think Mr H was to blame for the fact he didn't foresee the risk.

In recent years instances of individuals making large amounts of money by trading in cryptocurrency have been highly publicised to the extent that I don't think it was unreasonable for Mr H to have believed what he was told by the broker in terms of the returns he was told were possible, notwithstanding the fact it was highly implausible.

Mr H hadn't invested in cryptocurrency before and so this was an area with which he was unfamiliar. This unfamiliarity was compounded by the sophisticated nature of the scam, the fact he trusted the broker and the fact he believed the trading platform was genuine and was reflecting the fact his investments were doing well. So, he wouldn't have known to check the FCA register without being advised to do so by Wise, and there would have been no reason to verify the advertisement because he thought the investment was genuine.

Wise has also argued that there were negative reviews about M, but this doesn't mean Mr H didn't also see positive reviews. And I don't think it would have been negligent to go ahead with the investment having seen negative reviews because a negative review isn't evidence of a scam, and there are many reasons why a legitimate company might receive negative reviews.

So, I don't think Mr H can fairly be held responsible for his own loss.

Compensation

Wise has paid Mr H £50 compensation because it didn't respond to his claim in a timely manner, and I'm satisfied that's fair. He isn't entitled to compensation for legal fees, as our service is free to access.

My final decision

My final decision is that Wise Payments Limited should:

- refund the money Mr H lost from the third payment onwards, less any credits or refunds received during the scam period.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If Wise Payments Limited deducts tax in relation to the interest element of this award it should provide Mr H with the appropriate tax deduction certificate.

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

Carolyn Bonnell
Ombudsman