

## The complaint

Mr K complains that Wise Payments Limited won't refund money he lost after he had fallen victim to a scam.

## What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, and based on the submissions of both parties, I understand it to be as follows.

Mr K has told us that he and his ex-wife had purchased some land abroad, which they intended to build a house on. Mr K had saved the money for the build, but due to the pandemic the works were going to be delayed, so Mr K decided to invest the money in the meantime.

Mr K has said that he registered his interest online, for an opportunity to invest in bonds. Soon after this, Mr K has said he was contacted by somebody claiming to be from an investment company. But unknown to him at the time, the person who had contacted Mr K was a fraudster, who was impersonating a legitimate business.

The fraudster spoke to Mr K about an option that interested him, which was to invest in a bond, with a recognised high street bank. The fraudsters told Mr K that, due to Covid-19, the interest rate available on the bond would soon be cut, so encouraged him to act quickly. Mr K has said he carried out a number of checks before going ahead and making the payment, these included;

- Checking the ISIN number for the bond and finding that it was listed as a genuine bond.
- Checking the Financial Conduct Authority's (FCA's) register for the Investment Firm, where Mr K found them to be listed, with no warnings on the FCA Warning register.
- Contacting the Financial Service Compensation Scheme (FSCS) to confirm that the bond was covered under the scheme.

Satisfied with what he had seen, and believing everything to be genuine, Mr K decided to invest and went ahead and made the following payment from his Wise account;

|               |          |         |
|---------------|----------|---------|
| 31 March 2020 | Transfer | £60,000 |
|---------------|----------|---------|

Mr K has said, on 7 April 2020, he became suspicious when a call he had scheduled with the investment firm didn't go ahead. Mr K contacted Wise to explain that he had some concerns, but that, at this point, he wasn't sure if he had been the victim of a scam. Mr K contacted Wise again a couple of days later to confirm his suspicions were correct and he had sadly been the victim of a scam. Wise contacted the receiving bank (the bank to which the money was paid) on the same day, but unfortunately no funds remained.

Mr K complained to Wise. In summary, he thought Wise should have had measures in place to protect him and it should have challenged him when he was making a large payment.

Mr K said that if Wise had contacted him before he made the payment, and brought to his attention the potential risk of fraud, he would not have gone ahead with the transfer.

Mr K also didn't believe he had made the payment on an informed basis, because Wise didn't notify him that it had not signed up to the Contingent Reimbursement Model (CRM code). Mr K said that if he had known this he would've used a different payment service provider to make the purchase, as it would have offered him more protection.

Wise looked into things and issued its final response on 19 May 2020, not upholding Mr K's complaint. In summary, it said while it sympathised with Mr K's situation it didn't consider it was liable for the loss. This was because it said the service it provided had met the contractual obligations.

Unhappy with the response, Mr K brought his complaint to this service. One of our investigators looked into things and was of the opinion that the complaint should be upheld. In summary, our investigator concluded that Wise ought to have identified the payment Mr K made was unusual, due to it being significantly higher than previous payments and it was to a new payee. The investigator added that other large transactions Mr K had made previously, which Wise had pointed out, were made to payees Mr K had paid before. With this our investigator considered that Wise ought to have noticed the unusual nature of the payment and contacted Mr K, to discuss the transaction, before progressing it.

It was our investigator's opinion that if Wise had intervened, as he thought it ought to have done, it would have made a difference and stopped Mr K from making the payment. He said this because, he thought Wise could have asked Mr K questions about the purpose of the payment and it would have come to light that the payment was for an investment. Our investigator considered Wise were aware of the risk of cloned firms, which he said was supported by a blog it had posted in March 2020 and he thought, in line with its own guidance on its website, that Wise should have warned Mr K about cloned firms and how to check for them.

Our investigator was persuaded that Mr K's actions, in carrying out the checks he had before making the payment, demonstrated that he was being careful. So he thought Mr K would have taken Wise's advice and carried out further research. With this our investigator said Mr K would have found no registration for the investment firm on Companies House and no telephone number on the FCA's database for the investment firm, that Mr K could have called to verify the legitimacy of the investment. Additionally our investigator said the firm Mr K had actually paid (which the fraudster had explained was the holder of the Escrow for the investment firm) was not listed on the FCA's database.

Overall our investigator considered that the additional research, he thought Mr K is likely to have carried out, would have raised a number of red flags that would have prevented him from making the payment. Our investigator recommended that Wise should refund the money Mr K had lost, along with interest and it should pay a further £200 compensation due to the upset caused.

Wise didn't agree with our investigator's view. In summary it said;

- The investigator had made a number of assumptions about what Mr K's actions might have been if it had intervened.
- Mr K registered his account with Wise in 2014 and had been using its services since then. So it considered Mr K to be an experienced user of its services, predominately to capitalise on the commercial advantages of using its services for the purpose of international cross-border transactions.

- It didn't agree that by failing to intervene in this instance, it had failed to adhere to the duty of care it owed Mr K. It added that the evidence suggests Mr K was aware of the risks and was victimised due to the sophistication and professionalism of the fraud, not due to any lack of knowledge or information that it could have provided to Mr K at the time of the payment.
- It didn't agree the transaction Mr K made should have raised suspicions, as it was in line with the type of activity it expects its customers to use its service for.

As agreement couldn't be reached the complaint was passed to me for a decision. Ahead of issuing my findings, I asked our investigator to reach out to both parties to clarify this service's position with regards to any potential interest award on cases such as this, as it differs to those set out in our investigators view. I invited both parties to provide any final submissions. Wise didn't respond. Mr K responded and in summary said that while he understood the reasoning our investigator had provided; it was his understanding that 8% simple interest appeared to be the standard for cases such as his. Mr K added that the last 28 months had been a very difficult time for him.

### **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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I know Mr K has referred to other cases he has reviewed, which have been published by this service. But I would point out that, while on the surface complaints may seem quite similar, each complaint is determined by its own individual circumstances. Here, as I'm required to do, I've looked solely at the individual circumstances of Mr K's complaint.

There's no dispute that Mr K authorised this transaction and that means that under the Payment Services Regulations 2017 and the terms of his account he is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Wise should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which payment service providers are generally more familiar with than the average customer.

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I am aware that Wise considers too high a standard has been applied to what is expected of it in terms of identifying payments that might indicate a consumer is at risk of financial harm, and it's referred to the "Quincecare duty" and *Philipp v Barclays* [2021] in support of its argument.

I've taken Wise's comments into account. But we have a duty to resolve complaints based on what we think is fair and reasonable in all the circumstances of the case, taking into account not just the law, but also regulators' rules and guidance, relevant codes of practice and what we consider to have been good industry practice at the time.

So, in this case, I've thought carefully about Wise's obligations. I need to decide whether Wise acted fairly and reasonably in its dealings with Mr K, when he made the transfer to a fraudster and when he reported the fraud, or whether it should have done more than it did.

I've thought about whether the transfer Mr K made was out of character and unusual. I acknowledge that a customer funding an account specifically to make an international payment, as happened here, in and of itself, is unlikely to have stood out as being remarkable, suspicious or unusual activity to Wise and is broadly in line with what it would expect to see from one of its customers. And I appreciate that Wise has a difficult balance to strike, in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. But having reviewed the transaction Mr K made, I'm persuaded that it wasn't typical of how the account was usually run and so, I think it ought to have caused Wise to be concerned that Mr K might have been at risk of financial harm. I'll explain why.

In the circumstances of this case, I can see that Mr K had held an account with Wise for many years, so a reasonable profile of his typical account activity had been built, which Wise ought to have been alive to, when looking for unusual or suspicious activity. When looking at the payment Mr K has made for £60,000, it is for considerably more than any previous payment he has made and it is to a new payee. While Mr K had made other payments for relatively large amounts (three notable ones as had previously been mentioned), these were still for considerably less value, than the payment made to the fraudster and they were to known payees. I'm also mindful, that while Mr K has made transfers from his Wise account, it is more typically used for lower value card transactions. So overall, I'm persuaded that the payment for £60,000, to a new payee, was quite radically different when compared to how the account was more typically run, to the point where I think Wise ought to have intervened and discussed the payment with Mr K before allowing it to be progressed. And while some of Wise's customers might use their accounts only for occasional international transactions, Mr K clearly wasn't.

With all of the above in mind I think Wise ought to fairly and reasonably have asked additional questions to satisfy itself that Mr K wasn't likely to be at risk of financial harm. I should be clear from the outset, I can't know for certain how events would've transpired if Wise had handled things differently and intervened. So I must reach a conclusion based on the balance of probabilities and that conclusion must be informed by the available evidence.

In these particular circumstances, for example, Wise could have asked Mr K; what the payment was for, how did he hear about the investment, what rate of return had he been promised, what did he know about the company he was investing in. Mr K hadn't been

coached about what to say, as can often be the case with scams, so I think it more likely than not he would have answered Wise's questions freely.

I think it would have come to light that Mr K was intending to invest in bonds and that he had expressed an interest online. At the time, Wise should have been well aware of the possibility of legitimate financial businesses being impersonated or 'cloned'. And, given that scams of this nature often target people seeking fixed-rate bonds, such as this one, with the victims often initiating an interest online and then receiving contact, Mr K's mention of investing in such a product ought to have prompted further questions.

I'm not persuaded just because Mr K has used Wise's service frequently it makes him any more attuned to this type of scam. Indeed, Mr K has explained that he didn't have any previous investment experience, so I don't think he could fairly and reasonably have realised that legitimate companies could be cloned in this way. Wise has far superior knowledge of what scams like this look and feel like. It would have been straightforward for Wise to talk to Mr K about the prevalence of these types of scam and to what they look and feel like. And I think it fairly and reasonably could have informed him of the steps he needed to take to protect himself. And to have given him advice in line with the actions it was suggesting its customers could take to protect themselves in the blog it posted in March 2020 – an extract of which I have noted below;

- *Authorisation: Almost all financial services firms must be authorised by a national supervisory authority, who keep online registers. In the UK, for example, you can check the authorisation of a company in the FCA register. Other countries have their own national registers you can check. Log in using the official link rather than the link provided in an email or text. Always be careful of companies registered in countries where there is no regulation of financial services or where you might have trouble getting legal redress.*
- *Legitimacy: Check that the firm you're investing with is not a 'clone firm'. Scammers will often pretend to be from an actual legitimate firm that is authorised by the local authority. They often can furnish you with the website and legitimate employees' details. To verify the identity of an authorised firm ask for their Firm Registration Number (FRN) and contact details, but always call them back on the switchboard number given on the Register or the official number listed in formal companies registers such as Companies House. Consider direct contact with the local regulator to verify whether a firm or advisor is appropriately licensed and operating legally. If an investment is in another company, contact them directly to confirm if this is possible.*
- *Legal and financial advice: If all the above checks out, it might be best to consult a legal advisor to check over any contracts and agreements or a financial advisor who is qualified to advise on investments.*

Had Wise carried out these actions, I think it more likely than not would have prevented the scam and I don't believe Mr K would have gone ahead with the payment. I say that as I'm persuaded he had already demonstrated he was approaching the investment with caution by researching the company he intended to invest with. And so, I believe it's fair and reasonable to conclude he would have taken on board the significant new information and warnings from a professional service, particularly at the mention of a potential scam. I think it more likely than not the additional research Mr K is likely to have carried out would have led him to find that he was unable to confirm the legitimacy of the investment, through the channels that were open to him and it follows I think it more likely than not he wouldn't have gone ahead with the payment.

I think this is supported when considering Mr K's personal circumstances, in that he was investing his life savings, that were intended to build a home, so it seems he would have been particularly intent on doing the right thing. Overall, having considered everything carefully I don't think Wise went far enough with its intervention prior to Mr K making the payment. Had it of done, I don't think Mr K would have gone ahead with the payment and it follows that the money wouldn't have been lost.

I've thought about whether Mr K should bear some responsibility in terms of his actions. However, it is clear that up to and including the time of the payment authorisation he was in the dark and simply did not appreciate that he may have been at risk. He thought he was investing his money through a legitimate company. I am satisfied he was simply the unwitting and blameless victim of a clever fraudster. And Wise was the professional in financial matters.

### *Impact on Mr K*

Mr K has told us this situation has caused considerable stress and worry. It is important to point out that the bulk of that impact follows directly from the actions of the fraudsters. But I consider that Wise could and ought to have prevented Mr K from losing money as a result of the scam. By stopping the financial losses Mr K incurred, it is my finding that Wise could have reduced the overall impact on Mr K. Considering everything, I think Wise should pay Mr K £200 in compensation for the distress and inconvenience he experienced as a result of its actions.

### **Putting things right**

In assessing what would be fair compensation, an ombudsman should look to put a consumer as close to the position they would be in now, had a firm/business acted accordingly and prevented a loss from happening.

We would expect firms to pay interest (on top of any refund) from the date of loss, but in the individual circumstances of this case, I think that an award of 8% would represent significant betterment to Mr K, given that I understand his intention was to invest the money in such a way that his capital was not put at risk and such a rate of return would be unachievable without doing so.

So, I think interest should be calculated using the monthly average rate for one-year fixed-rate bonds, as published by the Bank of England, for the month of March 2020, from the date of the disputed payment until the date of settlement.

I think this is the fairest way of, as far as possible, putting Mr K in the position he would have been had the fraud not taken place – that being that he would have likely purchased a legitimate bond elsewhere and continued to invest his money without risking the capital.

In view of the above, I now direct Wise Payments Limited to:

- Refund Mr K the £60,000 he lost.
- Pay simple interest on that amount at the monthly average rate for one-year fixed-rate bonds, as published by the Bank of England for the month of March 2020, from the date Mr K made the payment to the date of settlement.
- Pay Mr K £200 for the distress and inconvenience caused.

**My final decision**

My final decision is that I uphold this complaint against Wise Payments Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 1 September 2022.

Stephen Wise  
**Ombudsman**