

## **The complaint**

Ms B complains that Wise Payments Limited won't refund money she lost as a result of a scam.

## **What happened**

Ms B started communicating with someone on a dating application. I'll refer to this person as G. G said they were a businessman based in another country. After gaining her trust, G offered to teach Ms B how to invest in cryptocurrency.

G instructed Ms B how to purchase cryptocurrency and transfer it to a trading platform. Once on the trading platform, G would advise Ms B when to buy and sell cryptocurrency. G even showed Ms B how to withdraw money – though she was only ever able to do this once and only for a small amount.

Ms B says she was instructed to pay various different payees, based in several different countries. She sent most of the payments through her Wise account, which was opened on 18 November 2020.

Between 21 November 2020 and 16 December 2020, she instructed Wise to make twelve payments to three different beneficiaries. The sequence of payments is relevant to my decision, so I've set them out below:

21-30 November 2020 – six payments totalling 43,000 NZD to Payee 1  
1 and 7 December 2020 – two payments totalling 30,000 NZD to Payee 2  
8–16 December – five payments totalling 75,000 NZD to Payee 3

On 30 November, Payee 1 was 'blacklisted' by Wise, meaning they could no longer receive payments through its platform.

Ms B says that around 5 December 2020 she accepted an 'account upgrade' from the trading platform without being told that she'd now need to have a substantial minimum account balance or face daily penalties. Ms B, after being told that she could not close her account and withdraw her money without increasing the balance, agreed to make further payments to her account to bring the balance up.

Her final payment – made on 16 December 2021 was stopped by Wise for fraud checks, but after a short conversation with Ms B, it was released and sent to the beneficiary.

Ms B reported she'd been the victim of a scam on 5 January 2021. Wise asked for a police report, but when this wasn't received, they closed the case. On 8 January 2021 it received a report from Ms B's bank attempting to recall some of the funds. Wise said the funds had already been sent on so it couldn't return them.

In April 2021, Wise gave its response to the complaint. It said that it wasn't responsible for what had happened as Ms B had made the payments herself and it was unable to recover them.

Ms B referred the complaint to our service and one of our investigators upheld it in part. They thought Wise should have contacted Ms B after Payee 1 was blacklisted and, had they done so, the scam was more than likely to have come to light and Ms B's loss would have been prevented. They also thought Wise hadn't done enough when it discussed the final payment with Ms B.

Wise disagreed, it said it wasn't practical to expect it to contact every customer that had made payments to an account which it had blacklisted. It said that Ms B would have seen a message when she tried to pay Payee 1 again but hadn't contacted it to ask why she couldn't make any further payments. This led them to conclude that Ms B was simply following the fraudster's instructions and wouldn't have responded to a warning.

It acknowledged that one of the reasons that her payment on 16 December 2020 was blocked was because she had made an attempt to send funds to previous recipients who had been blacklisted, but, it argued, this was only one factor that it considered and by this point Ms B had a history of making large overseas payments.

It also noted that at the point of the call on 16 December 2021, Ms B was concerned about incurring daily penalties on her investment, so it doubted the extent to which an intervention would have made a difference to Ms B's decision to keep making payments.

Our investigator disputed the suggestion that Ms B had attempted to make a payment to Payee 1 after they were blacklisted, instead they said that the fraudster had simply directed Ms B to pay a new payee.

Wise thought this was too coincidental and, as no agreement could be reached, the case was passed to me for a final decision.

### **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.

There's no dispute that Ms B authorised these transactions and that means that under the Payment Services Regulations 2017 and the terms of her account she 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.

Ms B only opened her Wise account for the purpose of sending money to the fraudulent trading platform. So, Wise had no genuine account activity to compare her payments against. It's also true that many of Wise's customers will use their accounts in the way that she did – to send one or more payment in another currency to a payee overseas.

So, based on the evidence I've seen, I don't think it could have reasonably believed that the payments made before 1 December 2020 were part of a scam. However, when Ms B attempted a payment on 1 December 2020, it had acquired knowledge that it hadn't had before – specifically that there was sufficient concern about the payee Ms B had been paying that Wise had taken the decision to ban its customers from sending payments to that payee.

I think this meant it had constructive notice that Ms B's previous account activity may have been linked to fraud. Wise argues that it would have been too burdensome to require it to contact each and every customer who had made payments to a blacklisted account every time it did this. But, I don't think it needed to do this to prevent Ms B's loss – it only needed to provide a warning to her when she tried to make another payment, to a new payee, following broadly the same pattern as her earlier payments. I think there was significant risk in allowing her to continue to make payments and I think Wise ought to have intervened, particularly given the substantial size of the payments.

Whether Ms B tried to make another payment to Payee 1 and was presented with an error (as Wise allege, seemingly without evidence) or whether she was simply directed to make payments to Payee 2 by the fraudster (as Ms B claims) is, I think, immaterial. The message that Wise said she would have seen gives no indication that she is at risk by making the payment.

It's also apparent that Wise does take into account previous payments to blacklisted payees when it decides whether to carry out additional checks on a payment. So, while Wise's ability or otherwise to take such a factor into account is not determinative here, it was clearly within its capabilities to do so.

Having thought carefully about this matter, given the information Wise knew, I think it needed to do more than provide a written warning, even one tailored to investment scams. I think it had reasonable grounds to suspect Ms B was at risk and it should have spoken to her to understand more about the context of the payments and to provide a tailored and dynamic warning.

I've gone onto consider whether such an intervention by Wise would have made a difference to Ms B's decision to make the payment on 1 December 2020 (and all subsequent payments).

Wise argue that Ms B's eagerness to make the payment on 16 December 2020 to avoid incurring fees shows that she wouldn't have heeded a warning. But, I'm suggesting it should have intervened earlier – on the payment made on 1 December 2020. This was before the fraudsters had threatened her with incurring fees – so I can't put much weight on her later urgency to make the payment.

The scam had many of the hallmarks of a type of scam that has become increasingly common – meeting the victim on a dating application and persuading them to become involved in cryptocurrency trading. The trading account aspect of the scam also had common features – the unregulated trading platform, initial profits and ability to withdraw and

the victim not fully understanding nor making any real decisions about what to trade and when.

I'd expect Wise, as a payment service provider, to have been fully aware of such scams and their common features. Had Wise discussed the matter with Ms B, I see no reason why she wouldn't have mentioned some or all of the information above, which (along with its existing knowledge of the recipient) ought to have given Wise significant cause for concern. She certainly believes (in hindsight) that had she been presented with a tailored scam warning she would have stopped. The only evidence of what might have happened is the call which took place on 16 December 2020 – but Wise didn't ask anything about the circumstances surrounding the payment and other than Ms B's eagerness to make the payment (which, as I've explained, may not have been present at an earlier point) gives little indication of how amenable Ms B would have been to a warning.

While I do take into account the fact that Ms B trusted G, I think on balance, given how apparent it ought to have been to Wise that Ms B was falling victim to a scam and in the absence of any evidence that Ms B would have misled Wise, an intervention is likely to have made a difference and her further loss would have been prevented.

I've also considered Ms B's role in what happened. As I've noted, G clearly built up trust with Ms B over time and appears to have both coached her and provided reassurance. She believed that she was being offered a business opportunity – not by someone who would look to gain themselves (or was connected to the fraudulent investment platform) but rather a friend and someone who wanted to help her make money. I can also understand why, as a layperson, the fraudulent trading platform and her interactions with its 'customer services' would have seemed convincing.

I know that on or around 5 December 2020, Ms B had been told that her account had been locked and that she needed to make payments to bring it up to a required minimum balance to avoid paying fees. I understand Ms B had accepted an account upgrade without realising what the implications of this were.

I've thought carefully about Ms B's decision to try and meet the demands of the fraudster. She was clearly put in a very difficult position and undoubtedly the sudden request to substantially increase her account balance was both concerning and unexpected. However, I've reviewed both evidence of the conversations she had with the fraudster and her testimony and I don't think that at the time she suspected that she might be the victim of fraud. Instead, it appears that she was simply concerned about having become involved in something that she didn't, perhaps, fully understand and was worried about losing her money. I also note that G told her that he was in the same position and even appeared to lend her funds in order to meet the requirement, which, I think, gave credibility to the fraudster's demands.

So, while in hindsight this was a clear attempt to extract more deposits from Ms B and prevent her from withdrawing funds, I can understand how to Ms B, or someone else in her position with her knowledge and experience, the reasoning the fraudster gave for this, as well as the way in which their demands were given credibility by G, would have seemed convincing. I also note that the fraudulent investment platform actually started to deduct fees from her account once the deadline passed.

So, overall, I don't think Ms B acted unreasonably and I don't think there should be a deduction from the amount Wise should refund.

Finally, I've considered Wise's attempts to recover Ms B's funds. Wise didn't try to recover Ms B's funds at the time of the transactions because it said it needed a police report from Ms

B. I understand this has now been provided to Wise. While I think Wise might have requested the return of funds without this, the prospect of recovery was, in any case, always going to be remote – given the high probability that the funds would have already been spent or moved on by the time the scam was reported and the possibility that the recipient bank would not return the funds without the permission of their account holder. So, I don't think its actions in this regard are likely to have caused any loss to Ms B.

Overall, for the reasons I've explained, I've decided that Wise should refund in full each payment Ms B made after and including the payment on 1 December 2020.

In relation to interest, I've reached a slightly different finding to that of the investigator. The money Ms B sent came from a mixture of savings accounts and investments. But for the scam, it appears the money would have remained where it was, so an interest award should aim to put Ms B, as far as possible, back in the position she would have been had the scam not taken place.

I've reviewed evidence provided by Ms B which shows that, over the relevant period, the performance of her investments was, at best, mixed. Her savings accounts appear to currently pay between 1.35% and 1.59%. It's not practical for me to work out exactly what her position would be, but taking into account the evidence I've seen as well as what's fair and reasonable in all the circumstances of this complaint, I think interest of 1% simple per annum should be paid from the date of each transaction to the date of settlement.

### **My final decision**

I uphold this complaint in part and instruct Wise Payments Limited to pay:

- Each payment Ms B made after and including the payment made on 1 December 2020 – a total of 105,000 NZD
- 1% simple interest per annum on each refunded payment from the date of the payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 15 August 2022.

Rich Drury  
**Ombudsman**