

## Complaint

Mr B is unhappy that Wise Payments Limited ('Wise') didn't take reimburse him after he fell victim to a scam.

## Background

In December 2021, Mr B fell victim to a scam. He was interested in buying a luxury watch. He found the model he wanted to buy on a trusted third-party website. It was on sale for \$19,200. The seller of the watch had a long-established account on this website and consistently positive feedback from other buyers.

The seller demonstrated his legitimacy by showing Mr B a copy of his driving licence and positive testimonials he'd received from other customers. Mr B was happy to go ahead with the purchase. He transferred the funds using his account with Wise. Unfortunately, the person Mr B was in contact with wasn't a legitimate seller of watches, but a fraudster. As I understand it, they had managed to take over the account of a historically trustworthy seller. This enabled them to take advantage of that seller's goodwill and exploit the opportunity to defraud potential purchasers.

Mr B realised what had happened quite quickly and took action. The seller was based in the United States. Mr B contacted the local police department in the seller's area. He also contacted the receiving bank – that is, the bank that provided the account to the fraudster. He says that an employee of the receiving bank told him it would freeze the fraudster's funds if it received a request from Wise.

Mr B complained to Wise, but it didn't agree to uphold his complaint.

It issued a final response on 6 January 2022 and said:

*"Wise cannot be made liable for any circumstances beyond our control, such as when a loss occurs as a result of fraudulent behaviour on behalf of the recipient following a payment made to them.*

*[...]*

*Once we were made aware of this recipient bank account possibly being used for scam purposes, we took the appropriate actions to prevent further transfers through our service. We will cooperate with any further requests made from your bank and/or judicial authorities should they contact us to assist in their investigations. However, as we don't have a business relationship with the recipient, we aren't able to compel them to return the funds to us in order to process a refund to you.*

*Our team did request a recall from the recipient bank on 15<sup>th</sup> December once we obtained details of the incident. However, to date we have not received a response from the receiving bank or recovered any funds."*

Mr B was unhappy with the response he received from Wise and so he referred his

complaint to this service. It was looked at by an Investigator who upheld it. The Investigator said that the payment was sufficiently out of character that Wise ought to have queried it with Mr B before allowing it to be processed. If it had done so, she was persuaded that the fraud would've been prevented.

Wise disagreed. It didn't think that the payment was out of character and it thought that, even if it had queried the payment with Mr B, he wouldn't have been persuaded to cancel it. Since Wise disagreed with the Investigator's view, the complaint was passed to me to consider and come to a final decision.

My initial findings were that the complaint should not be upheld. I emailed Mr B to summarise my reasons for that conclusion.

*...although I agree with what the Investigator has said about this payment being unusual and out of character, I'm not completely convinced that Wise Payments could've prevented the scam given how persuasive it was and the checks that you'd already carried out yourself. I wanted to explain my thinking on that point and give you the chance to respond or provide new evidence that might change my mind.*

*[...]*

*The payment was out of character when considered alongside the other activity on your account. Before it processed the payment, it should've made contact with you to satisfy itself that you weren't at risk of fraud.*

*However, it wouldn't be expected to carry out anything other than basic due diligence itself. The expectation would be for it to spot the risk of fraud and bring that risk to the customer's attention. If Wise had handled things as it should've done, it would've contacted you and explained that the payment was higher than normal and asked you some questions about it.*

*You'd have been able to reassure it that you'd carried out a range of checks and that you were buying through a reputable and trustworthy channel.*

*I wouldn't expect it to check the authenticity of US driving licence number. It would also most likely find it difficult to get confirmation about the owner of the receiving account. At most, it could've suggested that you make enquiries to check who the account holder was. But given the checks you'd already carried out, I'm not convinced it would've persuaded you to act differently.*

Mr B disagreed with my provisional findings. In his response, he said:

- The fact that Wise allowed this payment to be processed without any checks clearly shows it failed in its duty of care.
- He asked whether, under the Confirmation of Payee process, Wise should've been able to check the name of the account holder at the beneficiary bank.
- His contract with Wise says that it is liable to him for “foreseeable loss and damage caused by us. If we do not reasonably meet our commitments to you, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill. We are not responsible for any loss or damage that is not foreseeable ... Loss or damage is foreseeable if it is obvious it will happen ...”

- Mr B argues that this provision in his contract with Wise means that it should be obliged to reimburse him. It was plainly foreseeable that, if it didn't attempt to freeze the funds held at the receiving bank in a timely fashion, those funds could be dispersed.
- Mr B cited a final decision against Wise that was issued by another ombudsman. He said that this decision shows that it has had historic findings that it has failed to carry out appropriate due diligence on potentially fraudulent payments before allowing them to be processed. The fact that it did so again in Mr B's case and hadn't improved its systems showed that it fell below the standards expected of it.

I responded to Mr B in the following terms:

*Once a firm has identified that there is a greater than normal fraud risk associated with a particular payment, it needs to intervene in some way. Typically, this means that they should temporarily pause the payment, contact the customer and talk to them to see if those concerns about fraud are justified.*

*In the vast majority of cases, the firm won't know that a payment is fraudulent – just that the risk of fraud is above the baseline level of risk. It should encourage the customer to carry out further checks to protect themselves against the risk of fraud. The reason I'm minded to change the outcome that [the investigator] reached on your case is that it's not clear to me what it could've said during that interaction or what checks you could've carried out to bring to light that the person you thought you were buying the watch from was really a fraudster.*

*There may be other information which you can share with me that changes my mind on that. But it seems likely that, if they'd had a conversation with you about the purchase, you'd have explained the steps you'd taken to protect yourself from fraud.*

*You asked about the Confirmation of Payee service. Unfortunately, this service is only supported if the receiving account is located in the UK and so won't have been applicable to this transaction.*

*I've also taken a look at the issue regarding recovery of funds. When receiving a notification of fraud, Wise's main obligation would be to ensure that the message gets passed on to the receiving bank. The receiving bank can then choose how to act, subject to the rules of the jurisdiction it's operating in. It looks as if you reported the scam to Wise at around 15:00 GMT on December 14th. The evidence it shared with us shows it contacted the intermediary bank at 09:45 on 15 December. The notification it sent to the intermediary made it clear that you'd fallen victim to a scam and provided an outline of the basic events that had taken place. Once that allegation was passed on to [the receiving bank], it would be for them to decide what to do in the light of that information.*

*You've mentioned that the Wise customer agreement says that it will be liable for any foreseeable loss or damage it causes. I agree that dispersal of fraudulently acquired funds is a foreseeable consequence of failing to freeze the receiving account. However, the freezing of the account was outside of its control and so I don't think it can be said to be the cause of the loss.*

Mr B didn't agree with my conclusions. In an email sent to a senior colleague, he set out his concerns:

- He raised the issue of the earlier decision issued against Wise and noted that I hadn't

addressed his questions about this in my earlier email correspondence.

- He said that I had cited his due diligence as the basis for not upholding his complaint – essentially, that he has been disadvantaged for being too careful.
- He noted the fact that Wise showed us it had contacted the intermediary bank and shared the allegation of fraud. Mr B questioned whether Wise only made this request once, whether it received any response to its notification and, if it didn't, why it didn't send multiple requests to ensure that action was taken.

Because Mr B disagreed with the conclusions I'd set out by email, I've reconsidered all of the available evidence afresh to come to a final decision.

## Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Mr B has complained about two separate shortcomings on the part of Wise. He's alleged that it didn't take adequate steps to:

- protect him from or prevent the fraud; and
- assist him with attempts to recover his money once the fraud came to light.

I've dealt with each of these arguments separately.

### Prevention of the fraud

It is common ground that Mr B authorised the payment. Under the Payment Services Regulations 2017, he is presumed liable for the loss at first instance. However, this is not the end of the story. Wise is an electronic money issuer. The regulator, the Financial Conduct Authority (FCA), has confirmed that all e-money issuers *"must comply with legal requirements to deter and detect financial crime, which includes money laundering and terrorist financing."* The nature and extent of those obligations have been set out in many final decisions issued by other ombudsmen and I shared with Mr B an illustrative example of these.

Broadly summarised, the obligations on Wise at the material time were to:

- 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 banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken

additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In order to find in Mr B's favour on the issue of fraud prevention, I'd need to be persuaded of two things - first, that Wise failed to meet the standards described in the paragraphs above and second, that that failure was the cause of Mr B's loss. I'll deal with each point in turn.

*1. Did Wise fail to meet the standards expected of it?*

I'm persuaded that Wise should have recognised that there was an enhanced risk of financial harm due to fraud when Mr B asked it to make this payment. It was a large payment, international and made to a new payee. It shouldn't have been processed until Wise first contacted Mr B to satisfy itself that there wasn't a risk that he was falling victim to a scam.

In practice, it processed the payment without posing any further questions. For these reasons, I'm satisfied that it didn't act when it should have done and that it therefore fell below the standards expected of it.

*2. Did this failing cause Mr B's loss?*

As I explained above, I can't ask Wise to reimburse Mr B unless I can reasonably conclude that its error was the cause of his loss.

I have to take into account the law on this point. That means I need to be able to affirmatively answer the following question – would the damage or loss which Mr B has complained about have occurred “but for” the failings of the respondent? In other words, is there sufficiently strong evidence to show that it's more likely than not that, “but for” the failing on the part of Wise, the relevant loss would not have occurred? If the loss would have occurred in any event, the conduct of Wise is not a “but for” cause.

To reach a conclusion on this point, I need to consider what would have happened if Wise had handled things differently. It ought to have contacted Mr B and asked him about the payment. It should also have given him general guidance about the prevalence and risk of fraud and scams. I recognise (as Mr B has argued) that I can't know with certainty what he would have done if this had happened. At the point of making the payment, I can see that he had taken great care to ensure that he wasn't falling victim to a scam. He was buying through a reputable and trusted channel and had carried out some checks on the person who purported to be the seller.

Mr B has speculated that, if Wise had paused the payment, the fraudster might have been alarmed and broken off contact earlier than they did. This would've prevented the scam. I can't rule that out, but I don't find it very likely. An appropriate intervention by Wise would most likely only have resulted, at most, in a short delay for a telephone conversation to take place. A long delay might cause a fraudster to abandon an attempted scam. However, given the information that would've been available to Wise if it had intervened, I don't think such a long delay would've been an appropriate response.

Mr B has also said that he might have carried out further due diligence or looked at other payment options. If there were straightforward additional checks that he could have carried out that might have revealed that this was a scam, then he may have turned to these on being warned by Wise about the potential risks. However, in the correspondence I've had with Mr B, he hasn't highlighted any specific additional checks he could've carried out but didn't.

Mr B has argued that it's unreasonable to say that he shouldn't be reimbursed simply because he went to reasonable lengths to protect himself and that this means the extent of his due diligence is being held against him. It's entirely understandable that he feels that way, but it isn't an accurate reflection of my argument. The checks that he carried out before making the payment and the lack of any other clear steps he could've taken to verify whether the seller was legitimate are relevant factors in determining whether these failings on the part of Wise were the cause of his loss. Overall, my conclusion on this point is that, even if Wise had handled this risk in the way that was required of it, it's more likely than not that Mr B would've fallen victim to this scam anyway.

### Recovery of funds

Mr B is also unhappy that Wise didn't do more to assist with the recovery of his money from the receiving account. Good industry practice required that Wise notify the receiving bank promptly after becoming aware that Mr B had fallen victim to the scam. The relevant dates and times are set out in the background section of this decision. I'm satisfied that it complied with that requirement.

Its message to the intermediary bank communicated that a scam had taken place and what the basic details of that scam were. It made it clear that the recipient had ceased contact with Mr B and that Mr B had discovered the driving license used as proof of identity was forged. The message contained enough information for the receiving bank to be able to assess how it ought to respond. Once that information was communicated, it was for the receiving bank to decide whether it was legally required to freeze or restrict the account, subject to local laws and regulations.

As far as I can see, Wise didn't send any follow up messages after its initial notification. Strictly speaking, it wasn't obliged to do so (although I can understand why Mr B would've wanted them to) and there's no compelling evidence to suggest it would've led to them successfully recovering more of his funds. Fundamentally, if the receiving bank considered that it was required to return the funds to Mr B, it could've responded to Wise via the interbank messaging system, but it didn't do so.

### Other issues

Mr B has referred to a final decision published on this service's website. This decision was issued by another ombudsman but was a complaint against Wise and it was upheld. This decision related to a scam that took place over a year before the one Mr B fell victim to. He's said that Wise should've improved its fraud detection and prevention methods in the intervening period.

I've read the decision he's referred to carefully and I don't think there's anything in it that affects the outcome in this case. I don't know what steps Wise has taken since 2020 to improve its fraud detection systems. But as I set out above, I've already made a finding that it didn't intervene despite a clear indication of the fraud risk. The difficulty is that I also need to be persuaded that the evidence shows that this failing was the cause of Mr B's loss. For the reasons I've already explained, I'm not persuaded that it was.

Mr B has also pointed to the failure by Wise to contact him during this process. He's criticised the fact that it failed to communicate with him, even though he'd suffered such a significant loss and was in contact daily. I don't think there's any evidence to suggest that this lack of contact caused him any financial loss. Nonetheless, I agree that he received poor customer service and that this caused him distress and inconvenience. However, I can see that Wise offered him £100 in recognition of that. I think that's an appropriate sum and he's free to accept it if he wants to do so.

### **Final decision**

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 June 2023.

James Kimmitt  
**Ombudsman**