

The complaint

Mrs B complains that Wise Payments Limited won't refund the money she lost to an investment scam.

Mrs B is represented by a third party, but for ease of reading, I'll treat all submissions as having come from her.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief summary, Mrs B fell victim to a scam after registering her interest for a cryptocurrency investment opportunity. The scammers discussed the investment with Mrs B and she was told she could earn £12,000 from a £1 investment. She agreed to invest, with the guidance of the scammer.

The scammer instructed Mrs B to open Wise and Binance accounts to enable her to purchase crypto and load it onto the scam platform. Mrs B made the following payments to her Binance account from her Wise account, which she now disputes:

Transaction number	Date	Payment method	Amount
1	12 October 2022	Debit card payment	£1,000
2	13 October 2022	Debit card payment	£3,000
3	14 October 2022	Debit card payment	£1,000
4	17 October 2022	Debit card payment	£10,000

Mrs B reported the scam to Wise and it declined to refund her loss, so she referred her complaint to this service.

One of our Investigators suggested that Wise refunds Mrs B transaction 4 less 50% as he felt Mrs B should share blame. Mrs B agreed but Wise didn't. It said in summary:

- Many of its customers use its service to make card payments to Binance – which it does not prevent.
- Binance is a well-known and legitimate cryptocurrency platform and it doesn't consider payments to them as inherently suspicious or unusual.
- Mrs B opened her account specifically to facilitate her disputed payments and there was very little activity to compare to.
- Amongst the substantial transactions it has processed to Binance in the last 12 months, only 0.16% have been reported as fraudulent.
- When a customer makes a payment with their Wise card, there is no opportunity to suspect these payments to gather more information from a customer, it can only authorise or decline the payment.
- The Visa Secure Program Guide explains that issuers should decide within 5 seconds whether to proceed with cardholder authentication or continue without further authentication – so there is no time for extra actions such as calling the customer.

- Wise therefore has a strict model to identify payments from 3DS that it would reject, it didn't find these present in Mrs B's case.
- Its terms and conditions set out that it is responsible for foreseeable loss and damage caused by it and it couldn't have foreseen Mrs B's loss. Its terms also require customers to perform their own investigations before setting up a payment and failure to do so absolves it from reimbursing them.
- It shouldn't be held responsible for Mrs B not being truthful in her loan application with another banking provider.

The complaint has therefore been passed to me for determination.

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 the same reasons.

It's not disputed that Mrs B authorised the payments that are in dispute. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mrs B is responsible for them. That remains the case even though Mrs B was the unfortunate victim of a scam. Because of this, Mrs B is not automatically entitled to a refund.

But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether Wise acted fairly and reasonably in its dealings with Mrs B, or whether it should have done more than it did.

Mrs B's account was opened at the instruction of the scammers, so it was a new account with no previous transaction history for Wise to compare payments to. Given that it had no transaction history for Mrs B's account, Wise would have been relying on generic indicators of fraud risk when her initial three disputed payments were made. Wise would have had no idea of what might be normal for Mrs B's account at that time, and I don't think transactions 1 to 3 were high enough to have triggered further questions from Wise at that stage. So I consider that Wise acted reasonably in allowing these payments to be made without further questioning.

In this case Wise's 3 October 2022 terms and conditions gave it rights to suspend accounts for security reasons such as:

- suspected unauthorised or fraudulent use of your Wise Account

Whilst the current account terms did not oblige Wise to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Wise from making fraud checks before accepting or rejecting the payment.

And whilst Wise was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements, and what I consider to have been good practice at the time, it should *fairly and reasonably*

have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice banks and other payment service providers, including Wise, do.

In my judgement, transaction 4 should have flagged as potentially suspicious to Wise. Given the high value of this payment, and the risk that allowing such a high payment to go through could present, I think Wise should have contacted Mrs B directly to ask her some questions before allowing this payment to go through. Had Wise done this, then I think it is more likely than not that the scam would have been uncovered. Mrs B doesn't appear to have been given a cover story to use by the scammer, so I think that if Wise had asked what the payment was for then she would have been open and honest. And what Mrs B would likely have told Wise about what she was doing should have rung alarm bells for Wise, given that these types of investment scams are becoming increasingly common. Wise could then have explained the risk Mrs B was exposing herself to, and I consider it likely that the spell of the scam would have been broken and Mrs B wouldn't have proceeded with the payment.

I think Wise could have prevented the losses Mrs B incurred at transaction 4. I do, however, agree with our Investigator's finding that Mrs B ought to have thought twice before investing such large sums of money. She was presented with an unrealistic investment opportunity of potentially earning £12,000 from £1 which sounded too good to be true. She was also instructed by the scammer to take out a loan with another lender for the purposes of home improvements. I think she should have been concerned that she was being asked to lie on a loan application. Had Mrs B been honest in her intention of the use of the loan funds, it's likely the lender wouldn't have agreed to lend this money and she wouldn't have been able to incur the loss she incurred at transaction 4.

With this in mind, I think it's fair and reasonable for Mrs B to bear responsibility for 50% of the loss. I consider it fair and reasonable for Wise to refund 50% of that amount to Mrs B at transaction 4, along with interest. I think 8% simple interest is fair under the circumstances.

If Wise considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs B how much it's taken off. It should also give Mrs B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is, I uphold this complaint. Wise Payments Limited should;

- Refund Mrs B 50% of transaction 4 – a total of £5,000.
- Pay 8% simple interest per year, on the above amount from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 7 March 2024.

Dolores Njemanze
Ombudsman