

## The complaint

Mr B complains that Wise Payments Limited, trading as Wise, won't refund money he lost when he was the victim of a scam.

Mr B is represented by a firm that I'll refer to as 'R'.

## What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In 2023 Mr B was the victim of a car purchase scam. He's explained that he found the car advertised online and contacted the seller (scammer) who provided him with photos and videos showing the condition of the car, along with a copy of the V5C registration document (logbook). And that he also carried out MOT and HPI checks on the vehicle. Under the belief the car was genuine, Mr B agreed to purchase it and was provided an invoice for the payment to be made.

Mr B made two international payments totalling £19,500, sent in Euros, to the scammer through Wise – with the funds originating from an account Mr B held with a UK bank. The relevant payments are:

Date	Type	Amount
11 April 2023	International payment	£10,000
11 April 2023	International payment	£9,500
Total:		£19,500

Mr B realised he'd been scammed when he went to collect the vehicle but it wasn't there, and because the scammer stopped answering their phone.

R complained to Wise, on behalf of Mr B, in April 2023. They said Wise failed to protect Mr B from the scam by not identifying the above payments as out of character and indicative of fraud. And they considered the fraud could've been prevented had Wise appropriately intervened before processing the payments – as questioning Mr B about the purpose of the payments would've uncovered he was purchasing a car he hadn't seen, which is a common type of scam known to Wise and so, they ought to have advised Mr B against making the payments. R wanted Wise to reimburse Mr B for the loss he suffered and pay 8% interest.

Wise rejected the complaint. In short, they said:

- The obligation of ensuring the legitimacy of the recipient lied with Mr B, the sender of the payments. As they are a money remittance service, they don't have the ability to be involved with disputes between senders and recipients. And so, they recommend customers undertake their own investigations on the recipient before making payment.

- This is expressed in their FAQ page and the Customer Agreement which Mr B agreed to when creating his Wise account. As such, Wise cannot be held liable for losses that occur as a result of fraudulent behaviour on behalf of the recipient after the payment is made to them.
- They can only control and monitor activities in relation to their customers and while a transaction is pending in their system before being sent to the recipient bank. And once they were made aware the recipient bank account was possibly being used for scam purposes, they took the appropriate actions to prevent further payments being made to it via their service.
- Mr B made several transfers worth £6,000 using his Wise account in the past. The scam payments weren't therefore significantly out of the ordinary. And, due to the nature of their service, they would expect customers to make transfers of higher amounts and the threshold of what they would consider out of the ordinary is higher than a regular bank.
- Even if they had contacted Mr B and questioned him about the payments, they didn't think this would've affected his decision to proceed. This is because Mr B had carried out his due diligence and was satisfied with the legitimacy of the deal.
- The funds were transferred from Mr B's account held with a UK bank and they only acted as a payment processor. It therefore wouldn't be fair to put liability for Mr B's loss with Wise, and not his own bank.
- They completed the payments as directed and fulfilled their contractual obligations.

The complaint was referred to the Financial Ombudsman and our Investigator thought it should be upheld in part. She thought Wise ought to have identified the first payment of £10,000 as unusual and out of character – as, although Mr B regularly made international payments, they were rarely sent in Euros and were of a significantly lesser amount. So, she considered Wise ought to have contacted Mr B to discuss the payment before processing it. And, had this happened, Mr B would've most likely explained he was buying a car that he hadn't seen and that the invoice was provided from abroad (despite the car being purchased in the UK). Wise should've identified these red flags and warned Mr B about the risk of it being a scam – which she felt Mr B would've listened to and thereby decided not to go ahead with the payment(s).

Our Investigator did however think Mr B could've done more to protect himself – including seeing the car before purchasing it. And that he ought to have had concerns upon receiving an invoice requesting payment to another country, thereby prompting him to take greater caution. Because of this, our Investigator thought it would be fair for Wise to refund 50% of the loss Mr B suffered, along with paying 8% simple interest, to recognise contributory negligence on Mr B's part.

R confirmed Mr B's acceptance.

Wise disagreed and, in short, added:

- They facilitated the transfer by converting the funds to Euros, but they didn't hold onto the funds. And as a money remittance service, they expect customers to make transfers on this scale – especially with a payment reference referring to a car purchase. So, nothing looked irregular about the payments.

- Mr B has been a customer of theirs for eight years and they need to balance their obligations to deliver funds in a timely manner with the risks involved. Mr B had a history of large payments outside of the 12 months prior the dispute payments. And he represented a very low risk of fraud based around his actions.
- They understood Mr B's UK bank account provider would be held responsible for investigating transfers if out of character. And Mr B does use his Wise account regularly to take advantage of their competitive exchange rate when making card payments – but he doesn't use them as his primary bank account.
- Although the scammer was allegedly residing in the UK and sent an invoice from abroad, rather than the UK, they requested payment to their account in Euros which Mr B was clearly comfortable with. If the payments had been transferred in sterling, they might have considered them as suspicious – but they feel the Euro conversion is pertinent as Mr B exclusively uses his account for international transactions.
- They question why Mr B didn't consider the request for payment in Euros to be a red flag, along with why he didn't ask why it couldn't be made in sterling at the time? Particularly as they didn't consider Mr B as a layperson when it came to buying cars.
- Mr B made a calculated choice to send the funds before seeing the car in person – considering that getting an MOT check completed ahead of pickup outweighed the risks and urgency to collect it. And seeing a car in person feels like a very basic part of due diligence when buying a car.
- Even if they had intervened, they didn't consider it would've deterred Mr B from proceeding given the due diligence he'd undertaken. And he would've informed them of the strengths of the scammer doing video tours of the car in place of an in-person examination, the social engineering of the customer's relationship and the implied urgency of completing the transaction.
- As a money remittance service, they are under different scrutiny than a bank. They need to balance their customer's needs for quick and effective completions of their orders and conversions with the customer's safety. And the scam payments originated from Mr B's UK bank, not them. This type of transaction(s) is a perfect example of common use – and they expect their customers to make large conversation of funds periodically for large purchases or if they need to move funds.
- Mr B's UK bank, being his primary banking provider, has a greater understanding of his transaction history. And so is in a better position to determine what is considered out of character for Mr B.
- They feel a 50/50 split is unfair and referred to another case in which the Financial Ombudsman suggested a 25/75 split in compensation.

### **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 come to the same outcome as our Investigator and for similar reasons. I'll explain why.

In broad terms, the starting position in law is that an electronic money institute (EMI) – like Wise - is expected to process payments their customer authorises them to make. Here, it

isn't disputed that Mr B knowingly made the payments to the scammer. I appreciate Mr B was tricked by the scammer as he thought it was a genuine car he was buying. Nevertheless, I'm satisfied the payments were authorised by Mr B. So, under the Payment Services Regulations 2017 and the terms of his account, Wise are expected to process the payments and Mr B is presumed liable for the loss in the first instance.

Wise is an EMI and so, as they've pointed out, Mr B's account with them isn't a bank account. This means it isn't subject to the same fraud prevention expectations set out in guidance and regulation that a current account with UK bank provider otherwise would be. That said, it doesn't mean Wise has no obligation to Mr B. I'm satisfied Wise, under PRIN 2.1 in the Financial Conduct Authority's handbook, has a duty of care to treat their customers fairly. And Wise is also expected to be on the lookout of financial crime – and their terms and conditions reflect that they will take action if they suspect fraudulent activity.

From this, I'm satisfied 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 their 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 financial institutions 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.

At this point, I think it would be appropriate for me to address some of the arguments put forward by Wise regarding their involvement in the scam payments alongside what they consider to be the role and responsibilities of Mr B's UK bank account provider too (which is where the funds originated). But while I've considered Wise's views on this, including that they believe Mr B's UK bank to be better placed to identify what's considered as out of character for him and so should investigate this accordingly, I can only make a determination on the actions – or inactions – of Wise here. I therefore need to decide whether Wise acted appropriately when handling Mr B's payments – specifically, whether they should've done more before processing them and, if they had, would it have made a difference. And so, I've firstly looked at whether the instructions given by Mr B to Wise were unusual enough - in relation to his typical account activity – to have expected Wise to have identified Mr B was at risk of financial harm from fraud.

When considering this, I've kept in mind that EMIs process high volumes of transactions each day. And that there is a balance for Wise to find between allowing customers to be able to use their account and questioning transactions to confirm they're legitimate. But having looked at Mr B's account usage in the ten months prior to the scam occurring, it was typically used for low value international transactions – with the highest being just less £1,700. And so, the first payment – of £10,000 – was for significantly more than Mr B typically used his account for. Wise has pointed out that Mr B has, in the past, made several transfers worth about £6,000. But while that might be the case, I don't think those transactions were recent enough to the scam payments in question for them to be considered part of Mr B's typical account usage at that time. Because of this, and while Mr B may have regularly made

international transactions, I think the £10,000 payment should've stood out to Wise as being unusual and out of character for Mr B – thereby prompting concerns he may be at risk of financial harm from fraud. It follows that I think Wise should've held this payment and contacted Mr B before processing it.

Had Wise done so, I think it's likely Mr B would've explained the purpose of the payment – that being to purchase a car he'd seen advertised online. Given Wise's awareness of the prevalence of purchase scams, it would've been reasonable for them to have questioned Mr B about it further – including where he was buying the car from and if he'd seen the car in person, what due diligence he'd undertaken and why he was paying for the car by way of an international payment (in Euros).

I've no reason to think Mr B wouldn't have answered honestly. So, I think he would've told Wise he hadn't seen the car in person as it was about 100 miles away from him (in the UK) but the seller had provided photos and videos showing its condition. And, as part of his due diligence, he'd carried out MOT and HPI checks on the car and been provided photos of the V5C registration document from the scammer too. He was also making the payments as instructed by the seller, and as directed in the invoice he'd received.

Given their familiarity with the methods used by scammers, I think Wise ought to have identified red flags here – primarily that Mr B hadn't seen the car in person and, even though the car was being sold and collected in the UK, he was making international transfers to pay for it which offered less protection than other payment methods. And so, while Mr B may have been satisfied with the legitimacy of the sale due to the due diligence he'd undertaken, I consider Wise – as the financial experts – ought to have emphasised the likely risks of it being a scam. And, at the very least, advised Mr B not to make any payment without seeing the car first – especially as they would likely be unable to recover any funds if it turned out to be a scam.

Although Wise has said they do not consider Mr B to be a lay person when it comes to buying cars, I've not seen anything to support this. I also haven't seen anything to suggest Mr B wouldn't have been receptive to any scam warning or advice had it been provided. I therefore think it's reasonable to assume, had he been given a clear warning of the likelihood of it being a scam, Mr B would've most likely not gone ahead with the payment(s). It follows that I think Wise could've prevented Mr B's loss.

I've also thought about whether Mr B did enough to protect himself from the scam and I don't think he did. I think Mr B ought to have shown greater caution when buying the car. I appreciate Mr B has explained he relied upon the photos and videos provided by the scammer of the car due to it being about 100 miles away from his location. But I think it would've been reasonable for Mr B to have found a method of transport to view the car in person before purchasing it – particularly given the significant sale price. I also consider that Mr B ought to have had reason to question the legitimacy of the purchase upon receiving an invoice instructing him to make international payments, even though the car was being sold and collected in the UK. This should've been seen as unusual to him (as I likewise consider it should have for Wise). And so, I believe Mr B could've then taken additional steps before making the payments. This includes looking online for tips on buying a car safely, which was available on the car advertisement's website and – amongst other tips - advised never to buy a car without seeing it.

I therefore think it would be fair and reasonable to make a reduction in the award based on contributory negligence. Wise thinks a 50/50 split is unfair as they consider Mr B should take greater responsibility for the loss he's suffered. And they've referred to another case dealt with by the Financial Ombudsman in which a higher reduction for contributory negligence

was applied. I cannot comment on another case here but, instead, I must consider what I think is fair in the circumstances of Mr B's complaint. Having done so, I think it would be fair and reasonable to apportion responsibility equally to both parties – as I feel both Mr B and Wise could've equally prevented the scam from happening. And I'm not persuaded that it would be fair to apply greater weight to Mr B's failure to take greater caution when buying the car, than it would be for Wise's lack of intervention before processing the payment(s). Because of this, I think it would be fair for Wise to make a 50% reduction in the award based on contributory negligence in the circumstances of this complaint.

To put things right, Wise should refund £9,750 to Mr B – that being 50% of Mr B's loss. And they should also pay 8% simple interest to recognise Mr B's loss of use of this money – calculated from the date of each payment to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint in part. I direct Wise Payments Limited, trading as Wise, to:

- Refund £9,750.
- Pay 8% simple interest, per year, calculated from the date of each payment to the date of settlement less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 December 2023.

Daniel O'Dell  
**Ombudsman**