

## **The complaint**

Miss B complains that Wise Payments Limited (“Wise”) won’t refund over £45,000 she says she lost to an investment scam.

## **What happened**

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Miss B says she fell victim to an investment scam after she came across an advert on Facebook for a scam broker (“C”). She registered her interest and received a call, where she was encouraged to invest in cryptocurrency.

Miss B made payments from her Wise account to purchase cryptocurrency – either from Binance or through the peer-to-peer market – where she says her cryptocurrency was then sent on to the scammer. Over the course of four days, she made the following payments:

1. 21/10/22 12:15 - £5,000 to Binance via Debit card
2. 21/10/22 12:17 - £2,400 to Binance via Debit card
3. 21/10/22 12:24 - £2,600 to Binance via Debit card
4. 21/10/22 15:04 - £5,400 to F (private individual) via Faster Payment
5. 24/10/22 11:30 - £5,000 to Binance via Debit card
6. 24/10/22 11:41 - £2,900 to Binance via Debit card
7. 24/10/22 11:48 - £2,100 to Binance via Debit card
8. 24/10/22 12:53 - £5,000 to S (private individual) via Faster Payment
9. 25/10/22 11:38 - £5,000 to Binance via Debit card
10. 25/10/22 11:42 - £2,900 to Binance via Debit card
11. 25/10/22 12:13 - £2,100 to Binance via Debit card
12. 25/10/22 13:17 - £5,000 to S (private individual) via Faster Payment

Miss B realised she’d been scammed when she received a suspicious email from the ‘FCA withdrawal team’ requesting a large payment of taxes in order to access her profits. She reported the fraud to Wise, but it said it wouldn’t refund the money she lost as she’d authorised the payments. Unhappy with this, Miss B referred the matter to our service.

Our investigator upheld the complaint. He thought Wise should’ve had concerns and made further enquiries when Miss B attempted to make the third payment of £2,600 on 21 October 2022. Had it done so, he thought the scam would have been prevented, so he recommended that Wise refund the money Miss B lost from this point onwards. The

investigator also didn't think it would be fair to reduce compensation for lack of due diligence on Miss B's part because it's unlikely she would have found anything negative about C at the time.

Miss B accepted the investigator's proposals, but Wise disagreed, so the matter was escalated to me to determine.

I issued my first provisional decision on this complaint in January 2024. I said I didn't intend upholding it because, despite several requests, Miss B had not provided sufficient evidence of the scam she claimed to have fallen victim to. However, Miss B has finally provided evidence of the scam in response to my provisional decision, leading me to reconsider her case and whether Wise can fairly and reasonably be held responsible for the money she lost to the scam.

I issued my second provisional decision on this complaint in February 2024. I said I was minded to uphold it and set out the following reasons:

*In light of the further information recently provided by Miss B, I'm satisfied there is now enough contemporaneous evidence to demonstrate that she has likely fallen victim to a scam. Miss B has provided the following:*

- *Emails and text messages from C providing payments links and login details to the fake trading account.*
- *An email from a fake Wise email account regarding 'liquidity checks'.*
- *An email from a fake Binance email account about 'advanced verification' of her account.*
- *An email from the FCA confirming that the message she'd received asking for payment of taxes had not come from them (after the payments had been made).*
- *Statements and screenshots from Miss B's Binance wallet showing the crypto being moved on the same dates that payments were made from her Wise account.*
- *A timeline of how the scam unfolded.*

*As a result, I'm satisfied it's more likely than not that Miss B has lost her money to an investment scam. I've therefore gone on to consider whether Wise can fairly and reasonably be held liable for the loss she suffered from her account.*

*It isn't in dispute that Miss B authorised the disputed payments she made to the scammer from her Wise account to purchase cryptocurrency. The payments were requested using her legitimate security credentials provided by Wise, and the starting position is that firms ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.*

*However, I've considered whether Wise should have done more to prevent Miss B from falling victim to the scam, as there are some situations in which an EMI should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly suspicious or out of character.*

*Miss B's Wise account had only recently been opened a couple of weeks prior to her making the first scam payment, so I'm mindful that Wise wouldn't have had any transaction history in which to compare Miss B's spending against to determine whether*

*it was unusual. As such, don't think it would've had any reason or basis to connect the first two payments made on 21 October 2022 to a risk of fraud.*

*However, Miss B then went on to make a total of three payments to Binance that day, so I think Wise ought fairly and reasonably to have identified from the information available to it that there might be increased risk associated with these payments at the point she made the payment of £2,600 on 21 October 2022. This was the third payment being made to the same merchant in less than ten minutes, where the total cumulative spend that day had then reached £10,000 in total.*

*Wise will be aware that payments being made to the same payee in quick succession can often be indicative of fraud or potential financial harm. And whilst there may have been legitimate reasons why Miss B was making a series of payments in a short period to her crypto wallet, I am satisfied Wise ought to have recognised the enhanced scam risk at this point. So, in those circumstances, it should fairly and reasonably have made further enquiries to determine the purpose of the payment and provided a tailored scam warning.*

*I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Wise's primary duty to make payments and that it shouldn't unduly inconvenience its customers attempting to make genuine payments.*

*I understand that Wise wouldn't have had any significant or concerning information about the destination or purpose of this payment. But in my view – as Wise had such little information about the payments – I think it would have been reasonable for it, in line with good industry practice at the time, to have declined the card payment until it could seek to narrow down the nature of it so that it could provide a warning that was specific to the likely scam category.*

*Wise says it does not have the ability to suspend card payments to allow it to contact a customer in the same way that it can for bill payments. I'm aware of the differences between authorised push payments and debit card payments, and that a payment service provider cannot 'pause' a card payment in the same way it can a push payment. But that does not mean that Wise cannot prevent potentially fraudulent card payments from being made, as there is nothing preventing it from stopping the card payment altogether if it suspects fraud, until such time that it has made further enquiries and either given a tailored scam warning or satisfied itself that there is little or no scam risk associated with the payment.*

*I also acknowledge that the payments made from Miss B's Wise account first went to her crypto wallet before being transferred on to the scammer. But in reaching my view that Wise ought fairly and reasonably to have made further enquiries, I consider it ought to have been mindful of the potential risk to Miss B of 'multi-stage' fraud – whereby victims are instructed to move funds through one or more legitimate accounts held in the customer's own name to a fraudster. Indeed, the use of and risks to consumers of multi-stage fraud were well known to firms by October 2022.*

*If Wise had provided a tailored warning, would that have prevented the losses Miss B incurred after that point?*

*I've thought carefully about whether a specific investment scam warning would have likely prevented any further loss in this case. And on the balance of probabilities, I think it would have. If Wise had asked Miss B to disclose the purpose for the payment she was*

*making, I think it's likely she would have been upfront about what she was doing. There's no indication that she had been coached by the scammer into misleading Wise, for example, so I'm satisfied she would have likely disclosed that the purpose of the payment was for an investment.*

*Wise should have then provided a specific warning to Miss B covering off the key features of investment scams, such as dealing with a third party 'broker', finding an investment on social media, and being asked to make payments to a trading account through cryptocurrency wallets, amongst other things. These are all common hallmarks of an investment scam, and it was also the exact circumstances of the situation Miss B had found herself in.*

*Therefore, had Wise provided Miss B with an impactful warning that gave further details about how she could protect herself from the risk of fraud, I believe it would have resonated with her. Miss B said that C told her it was FCA regulated. Wise could have told her how and where to check the FCA register, where she could have discovered that C was not in fact regulated in the UK or abroad, as well as the various regulatory warnings about the risk of cryptocurrency investment scams. Therefore, I'm satisfied that a warning to Miss B from Wise would probably have exposed the scammer's false pretences, causing her to stop 'trading' and preventing any further losses.*

*So, overall, I'm satisfied Wise should fairly and reasonably have made further enquiries before processing any further payments. If it had, it is more likely than not that the scam would have been exposed and Miss B would not have lost any more money. In those circumstances I am satisfied it is fair to hold Wise responsible for Miss B's loss.*

#### *Contributory negligence*

*There is a general principle that consumers must take responsibility for their decisions, and I am mindful of the law relating to contributory negligence and the impact a finding of contributory negligence may have to reduce the damages recoverable by a claimant in court proceedings.*

*I have duly considered whether it would be fair and reasonable for Miss B to bear some responsibility by way of contributory negligence, and I'm currently minded to find that she shouldn't be held partly responsible in the circumstances of this case.*

*Miss B has said that she carried out some research on C prior to parting with her money but could not find anything negative about the broker. I appreciate that an FCA warning was published about C in December 2022, but this was after she had already made the payments. And having carried out my own research, I also have not been able to find any warnings or adverse information about the broker from around the time Miss B decided to invest. As a result, I don't think any further research or due diligence Miss B could've carried out would've likely had any impact on her falling victim to the scam.*

*Wise has said that Miss B should've researched whether the broker was registered or not. But I would not expect an inexperienced investor to know how or where to look up whether a particular firm was authorised, so I don't think her failure to do this alone is enough to hold her partly responsible for her losses.*

*I also haven't seen anything to suggest that Miss B was made any promises of unrealistic returns either. The emails she received from the scammer – including the fake emails received from Binance and Wise – also all appear to be convincing with company logos etc. So, having considered all the circumstances of this case, I'm not persuaded it would be fair and reasonable to hold Miss B partly responsible in these circumstances.*

Could Wise have done anything else to recover Miss B's money?

*I've also thought about whether Wise could have done more to recover the funds after Miss B reported the fraud.*

*However, in terms of the card payments, as this money was used to purchase cryptocurrency, I'm not persuaded there would have been any reasonable prospect for a chargeback claim succeeding, as the merchant would be able to demonstrate that it had provided the goods/services that had been purchased using the debit card (in this case, the cryptocurrency that was then sent on to the scammer).*

*Similarly, in terms of the bill payments, Wise has explained that these were made to other cryptocurrency traders who used their Wise accounts to receive payment. So, it could not fairly seek to recover the money Miss B paid to these individuals as they were not involved in the scam and had provided the cryptocurrency she purchased.*

*As a result, I don't think there was anything more Wise could've done to recover the money in these circumstances.*

I invited further comments and evidence in response to my provisional decision. Miss B accepted my findings, but Wise disagreed. In summary, it considers that Miss B should be held jointly responsible for her loss for failing to carry out sufficient due diligence and research into the investment prior to parting with such large amounts of money.

**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 have also taken Wise's recent comments into account about Miss B's sharing responsibility for her loss. But having done so, it hasn't changed the conclusions I set out in my provisional decision.

I understand that Wise does not consider Miss B to have carried out a sufficient level of due diligence prior to investing her money with the scammer. However, it's not enough to simply say that Miss B failed to carry out sufficient due diligence, and that she should therefore have her compensation reduced. In order to fairly and reasonably make a deduction for contributory negligence, I would have to be satisfied that further research and due diligence would have likely had some form of *impact* on Miss B choosing to invest with C and realising it was a scam.

As I set out in my provisional decision, there was no adverse information about the broker online at the time Miss B chose to invest. There were no warnings on the FCA or IOSCO pages, and neither were there any forums warning about the broker. So, there would've been little to alert her to the risk of C being a scammer at the time. Wise says Miss B should have carried out research about general cryptocurrency investment risks, where she could've learnt and identified the key features of common investment scams. But this is precisely the sort of information Wise ought to have provided in a tailored scam warning, which it failed to provide. I would not expect an inexperienced investor to assume they could still be at risk of a scam if they hadn't found any warnings or negative information about the company they were investing with. So, it follows that I wouldn't have expected Miss B to conduct further research into investment scams more *generally* if there was nothing to immediately indicate she was at risk of fraud with the company she was dealing with.

As a result, I'm still not persuaded it would be fair and reasonable to reduce Miss B's

compensation on the basis of her failing to carry out sufficient due diligence, as I'm not persuaded any further research would have likely impacted her decision to invest with C.

Other than putting forwards additional submissions about Miss B's contributory negligence, Wise has not commented on any other findings set out in my provisional decision. I therefore see no reason to depart from the conclusions I set out in that decision, and it follows that I uphold this complaint for the same reasons.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Wise Payments Limited to:

- Refund the payments Miss B lost to the scam, from the third payment made on 21 October 2022 onwards.
- Pay 8% simple interest per year on this amount from the date of each payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 24 April 2024.

Jack Ferris  
**Ombudsman**