

The complaint

Ms J complains that Wise Payments Limited refuses to refund the money she lost to an investment scam.

What happened

Ms J was looking for an investment opportunity and saw an advert online for a company I'll call 'C' - which was celebrity-endorsed. Ms J registered her interest using C's online form and received a call from one of their representatives. Ms J says C's representative was professional and friendly and they also advised that they were regulated by the FCA. Ms J decided to open a trading account with C.

Ms J funded her Wise account using funds from one of her existing banking providers (Bank A), she was advised by C to first purchase crypto from a company I'll call 'B' and load the crypto onto her C trading account. Ms J disputed the following debit card payments made from her Wise account to fund and subsequently release her investment with C:

Transaction number	Date	Payee	Amount
1	17 January 2023	B	£15
2	2 February 2023	B	£4,950
3	3 February 2023	B	£4,999
4	3 February 2023	B	£5,000
5	4 February 2023	B	£5,000
6	4 February 2023	B	£4,598.05
7	6 February 2023	B	£4,948.32
Total			£29,510.37

Ms J says she discovered this was a scam when Bank A blocked her final payment to Wise and identified that she'd fallen victim to a scam. Ms J made no further payments after this point.

Ms J complained to Wise and asked that it refund her disputed payments.

Wise issued its final response explaining that Ms J authorised the payments to a legitimate merchant and although it tried to recall her payments, it was unable to retrieve any of her money.

Unhappy with its response, Ms J referred her complaint to this service.

One of our Investigators looked into things and felt that Wise could have reasonably intervened at transaction 3 and prevented the loss. He noted there was an FCA warning about C at the point of this payment and this would have reasonably dissuaded Ms J from investing any further. He felt that Wise should refund transaction 3 and the payments that followed, less any refunds already received by Ms J.

Ms J agreed but Wise did not. It said in summary:

- Many of its customers use its service to make card payments to B – which it does not prevent.
- B is a well-known and legitimate cryptocurrency platform and it doesn't consider payments to them as inherently suspicious or unusual.
- Ms J opened her account specifically to facilitate her disputed payments, which is inline with the expected use of its services.
- Amongst the substantial transactions it has processed to B 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 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 Ms J's case.

The complaint has therefore been passed to me for determination.

On 10 April 2024, I issued a provisional decision upholding this complaint in part. For completeness, I repeat my provisional findings below:

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 uphold this complaint in part but I think Wise should have intervened at an earlier point to that of our Investigator. I'll explain why.

It's not disputed that Ms J authorised the payments that are in dispute. So as per the Payment Services Regulations 2017 (which are the relevant regulations in place here) that means Ms J is responsible for them. That remains the case even though Ms J was the unfortunate victim of a scam. Because of this, Ms J 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 Ms J, or whether it should have done more than it did.

Ms J's account was a new account with no previous transaction history for Wise to compare payments to. Given that it had no transaction history for Ms J's account, Wise would have been relying on generic indicators of fraud risks when her disputed payments were made. Wise wouldn't have reasonably known what might be normal for Ms J's account at that time, and I don't think transaction 1 was unusual to have triggered further questions from Wise, it was a very low value payment. So I consider that Wise acted reasonably in allowing this payment 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 2 should have flagged as potentially suspicious to Wise. Given the value of this payment being made to B, I think Wise should have reasonably provided a tailored written warning to Ms J. Had Wise done this, then I think it is more likely than not that the scam would have been uncovered. Wise would have reasonably identified that Ms J was making payments to crypto and I think a tailored warning about crypto scams would have made Ms J pause and look further into C. Had Wise for example prompted Ms J to check the FCA's warning list, she would have identified that a warning about C had just been published and I think she'd have stopped in her tracks.

I've not seen evidence that Bank A was able to intervene in the scam and uncover it as Bank A doesn't have any copies of telephone calls it had with Ms J. But I have no reason to disbelieve what Ms J has said. Having looked at the correspondence between Ms J and C, she was proceeding cautiously with her initial investment, despite some pressure for her to pay more. It seems to me that it took a lot of convincing on the scammers part in order to get Ms J to deposit further funds. I think seeing a warning that included common crypto scam tactics would have resonated with her. As these were the funds for her house deposit, I think she'd have taken a warning from Wise very seriously.

In other words, but for a tailored warning from Wise, I don't think Ms J would have lost any further money from transaction 2 onwards.

I've also thought about whether Ms J contributed to her losses. I've noted she was an inexperienced investor and had no reasonable reason to question whether what C had told her was true. There were no credible warnings about C at the start of her investment, so I don't think she could have reasonably identified they were scammers herself. I'm therefore satisfied that Ms J's settlement shouldn't be reduced on the basis that she contributed to her losses.

Responses to my provisional decision

Ms J replied accepting my provisional decision, she provided no further comment. Wise did not reply to my provisional 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.

As neither party provided any further comment to my provisional findings (which forms part of this final decision), I see no reason to depart from what I said in my provisional decision.

My final decision

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

- Refund Ms J transactions 2 to 7 – a total of £29,495.37.
- Pay 8% simple interest per year, on the above amount from the date of the respective payments to the date of settlement (less any lawfully deductible tax).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 23 May 2024.

Dolores Njemanze
Ombudsman