

The complaint

Mrs V is seeking to recover £1,000 from Wirecard Card Solutions Limited, a payment she made from her U Account as a result of a third-party scam November 2018.

Mrs V is represented by her son, but I have referred to Mrs V throughout this decision, even though during our investigation it was sometimes Mrs V's son giving testimony on her behalf.

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 outcome as the investigator broadly for the same reasons.

It is not in dispute that Mrs V authorised the payment of £1,000. She was duped by a scammer into transferring her funds into their bank account. They deceived her by placing a fake advert for a car on a social media site and asked her to pay a £1,000 deposit for the car.

I therefore accept that this was an 'authorised payment' even though Mrs V was the victim of a sophisticated scam. She sent the money via her bank account using her security credentials to request the payment. So, although she did not intend the money to go to the fraudsters, under the Payment Services Regulations 2017, Mrs V is presumed liable for the loss in the first instance.

However, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. Amongst other things, this might involve a bank looking to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.

Accordingly, I first need to determine whether Wirecard breached that duty when executing Mrs V's payment request for the £1,000 transaction.

Most of the previous activity on Mrs V's pre-paid pay as you go current account in the 6-month period before the scam related to direct debits, debits and some faster payments into her account. From what I can see, Mrs V hadn't made any faster payments out to a new payee or paid out sums for £1,000 in recent times.

I appreciate this transfer was not in line with Mr V's everyday activity. But I've also thought carefully about whether the payment was particularly suspicious such that Wirecard should have been alerted to the possibility Mrs V might have been at risk of financial harm and so therefore questioned her further.

However, I'm not persuaded that it's reasonable to expect Wirecard to have intervened in this case. The balance in Mrs V's account wasn't cleared and I'm not persuaded that based

on the size of the payment that there was enough suspicion about it that I would've expected Wirecard to call Mrs V.

I appreciate another bank may have made contact with Mrs V's son regarding a much smaller payment than this. Whilst I do not know the full context around this example, it would be impractical for banks to stop all payments of £15 for further scrutiny. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. Of course, those arrangements do need to accommodate that spending habits alter, unusual needs arise (such as a deposit for car purchase as was the case here) and it will be impossible to prevent all fraud without a significant number of genuine payments being delayed considerably and inconveniently. It remains that the payment wasn't fraud on the account itself. To the bank, it was a genuinely authorised payment. On the face of it, it seems to me that that there was no reason why the payment wouldn't have seemed genuine.

The business has recently told us it took the appropriate action by contacting the beneficiary bank to try and recover the funds – although it hasn't provided evidence in support of that. However, it seems, from what both Mrs V says and the payee bank has told us, Wirecard did not take reasonable steps to try to recover the funds from the payee bank when Mrs V reported the fraud to it on 1 December 2018.

Even if I found Wirecard didn't take reasonable steps to recover the funds, I don't think this automatically means Wirecard should refund Mrs V the £1,000. The reason I say this is where a business makes a mistake, I need to think about whether that mistake would have made a difference and I don't think it would have made a difference here. I'll explain why.

If Wirecard had taken reasonable steps to recover the finds from the payee bank, it still would have been too late. It is common knowledge that scammers do normally remove stolen funds as quickly as possible in order to avoid detection and recovery. According to the payee bank, the funds were credited by Mrs V at 11.17 on 27 November 2018 and withdrawn the same day at 15.57. So even if Wirecard had acted immediately when Mrs V first notified it on 1 December 2018, there was no reasonable prospect of recovering the funds.

Mrs V originally mentioned a potential section 75 claim but section 75 is a section in the Consumer Credit Act 1974 (CCA), which says in certain circumstances, the borrower under a credit agreement has an equal right to claim against the credit provider if there's a breach of contract or misrepresentation by the supplier of goods or services. But as the investigator pointed out there is no credit agreement in place for Mrs V's account and therefore the CCA doesn't apply in her case.

I also note Mrs V refers to the APP code of practice introduced in 2019 - known as the Contingent Reimbursement Model. This is a voluntary industry code which set new standards for the prevention of APP scams - but not all banks, including Wirecard, are signed up for it. In any event, as our investigator has already explained, the scheme wasn't introduced until May 2019 - after Mrs V made the payment in question. So I can't fairly require Wirecard to cover Mrs V's payment.

I'm very sorry, as I know this will be disappointing news for Mrs V. Despite my natural sympathy for Mrs V, who has been an innocent victim of a sophisticated scam, it would be unfair and unreasonable to hold Wirecard liable for payments which, under the Regulations, Mrs V must be regarded as having authorised.

Overall, I don't consider Wirecard has treated Mrs V unfairly. Ultimately, Mrs V's loss is the result of a third parties' actions and I don't think it would be fair to ask Wirecard to make good the loss when there's no evidence it's done anything wrong in terms of identifying Mrs

V's payment as suspicious. And any failings, in terms of recovery of funds, wouldn't have made a difference in this particular case.

My final decision

My final decision is I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V to accept or reject my decision before 25 August 2021.

Kathryn Milne
Ombudsman