DRN-3300882

The complaint

Mr N is unhappy that Wise Payments Limited ("Wise") won't refund him money he lost as a result of a fraud.

What happened

Mr N learned of an investment opportunity after meeting an individual through an online dating website. The individual befriended Mr N over the course of months and disclosed that a relation of theirs was a trading professional and consultant for a large investment firm based abroad. They also convinced Mr N that they were a successful investor themselves by sending him screenshots of high value successful trades.

Due to Mr N having some prior experience of trading in investments—including cryptocurrency and other commodities—he was satisfied that the person was knowledgeable in this field. Unfortunately, it later transpired that the person he was speaking with was in fact a fraudster.

The fraudster prompted Mr N to adopt some of their trading strategies and sent him a link to a platform they were using to trade successfully. Mr N carried out a number of checks on the trading company by obtaining its company number and cross referencing this with the relevant registration database in the country where the business was based. This found a positive match; which reinforced his belief that it was genuine.

Mr N deposited a trial amount to test the platform out under the guidance of the fraudster. The result was, as Mr N describes, "a small impressive instant profit".

Mr N continued to use the platform over the subsequent months to make a number of trades under the guidance of the fraudster. In total, he deposited 126,800 US Dollars (USD) into the trading account via a number of transfers from his Wise account between January and April 2020.

The fraud was discovered by Mr N when he attempted to withdraw his funds from the trading platform. He was provided a number of excuses as to why the funds couldn't be released; including a tax charge that was required to be paid first. Mr N reported the fraud to Wise and complained that it'd not done more to protect him.

Wise looked into Mr N's concerns but didn't agree it'd done anything wrong. It pointed out that it wasn't made aware of the fraudulent transactions until after they'd been made. It also pointed out that the terms of Mr N's account—which he signed and agreed to—highlighted that it can't be held responsible to Mr N for foreseeable loss and damage. It agreed to co-operate with any institutions investigating the matter, including the Police, if contacted directly.

Mr N wasn't happy with this response, so he referred his complaint to this service where it was looked into again by an Investigator.

The Investigator concluded that the transactions carried out on Mr N's account should have caused sufficient concern for Wise to intervene. She thought this was particularly so considering that the payment of 10,000 USD was unusual and out of character when looking at Mr N's normal account activity.

The Investigator felt that had Wise intervened in the payments—as she thought it should have—then it likely would have been able to prevent the fraud from continuing. She thought that a warning of these types of fraud, and an attempt to highlight some of the unusual factors surrounding it—such as the online dating approaches and unrealistic returns—would have given Mr N cause to step back and reconsider the transactions. As such, she recommended that Wise refund all transactions from the second payment; including interest.

Wise disagreed with the Investigator's findings. It provided a number of statistical analyses of fraud payments in general. It also pointed out that its regulatory expectations when dealing with fraud have to weigh against its obligations to follow a customer's instructions when requesting a payment be made. It found that the Investigator's assessment placed an unrealistic burden on it to contact a large number of customers on a daily basis. And it felt this wasn't reasonable when considering the realities of the financial market.

As Wise disagreed with the Investigator's assessment, the matter was passed to me for a decision. On 24 January 2022 I issued my provisional findings and gave both parties a chance to respond to these. My provisional findings were as follows:

'It's common ground that Mr N authorised the payments made as a result of the fraud. He was duped by the fraudsters into instructing Wise to transfer those sums to the accounts within the fraudster's control by convincing him he was participating in legitimate investments.

I accept that this was an 'authorised payment' even though Mr N was the victim of a sophisticated fraud. He used his genuine security credentials to request the payments. So, although he didn't intend the money to go to the fraudsters, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr N is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider 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 its 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 businesses are generally more familiar with than the average customer.*
- *In some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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 and fraud.*

I also think it's important to highlight the complexities that regulated financial businesses, such as Wise, face when fulfilling their obligation to prevent financial crime and money *laundering against their obligation to fulfil their customer's instruction to make payments. This can be a difficult balancing act between identifying risk and placing particularly onerous processes in place that frustrate a customer's ability to conduct genuine payments.*

Should the payments have flagged as unusual or out of character?

Here, Mr N made a number of payments ranging from 5,000-40,000 USD to three separate accounts over a period of circa four months.

Looking at Mr N's normal account activity over the preceding six months, it's clear that he made a number of high value transactions out of his account; some of which amounted to over 5,000 USD. He also received into his account a number of high value transactions ranging from 20,000-50,000 USD. I must also consider that the account was, by its very purpose, set up to make international payments using different currencies. And it was therefore not unusual to see these types of payments to new payees in comparison to standard, mainstream bank accounts.

For the above reasons, I'm not persuaded that the payments ranging from 5,000-15,000 USD do appear to be particularly unusual when comparing them to Mr N's usual account activity. It's reasonable to expect the average consumer to make an occasional larger payment for goods or services. And as Mr N had a history of making international and alternative fiat currency payments on this account, this wouldn't have necessarily been an indicator of unusual activity.

Having said that, I do think the payments of 40,000 and 30,000 USD did present a significant increase in spending on his account. And these two transactions were carried out within a short period of time (circa 14 hours). As the first of the two payments was for 40,000 USD, I think this presented an opportunity for Wise to intervene in the payment and validate its authenticity.

Would intervention have prevented the fraud?

This element of the complaint is particularly difficult to decide, as it requires me to consider a hypothetical scenario. So, I've had to weigh up the evidence and testimony provided by both parties to find, on the balance of probabilities, what is more likely than not to have happened had the intervention occurred.

Mr N had met the fraudster via an online dating website and rapport and trust had been built with them over a number of months; despite the fact that they'd not met. This would present a red flag to a finance professional adept in fraud as this tends to be a common method fraudsters use to extract money from their victims. And I think Wise would have been alive to this if Mr N had disclosed the circumstances of his introduction to the investment.

Having said that, there are a number of factors aside from these which lead me to conclude that he would have continued with the payment even had he been put on notice regarding potential frauds of this nature.

Mr N has informed our service that he's an experienced investor who has knowledge of trading cryptocurrency and commodities. This is also apparent in the messages he's disclosed to our service between him and the fraudsters. He is evidently familiar with the terminology, acknowledges risk and discloses some of his previous investment experience.

I think this knowledge of investments was likely to go hand in hand with knowledge of potential investment frauds. This is further supported by Mr N's actions prior to fully committing in the investment. He tested the knowledge of the fraudsters when it came to investments. He also carried out a number of due diligence measures. These include comparing the company registration number against official records held in the country where it was based. He also admits participating in a 'test' trade to ensure the returns were as specified, and likely to test the legitimacy of the company he was trading with.

These actions appear to me to be those of a person aware of the potential risks of fraud and were for the purpose of mitigating this risk.

So, had Wise contacted Mr N and highlighted these potential risks, or even presented him with a warning prior to processing the payment, I don't think this would have likely stopped him from proceeding. He'd carried out due diligence to satisfy himself he wasn't at risk, he was aware of current markets and returns—so would have been aware of too-good-to-be-true returns—and he was likely aware of the existence of investment frauds more broadly. So if Mr N had satisfied himself that they were genuine, I question how Wise would have been able to persuade him otherwise.

These factors persuade me that any intervention by Wise would have been ineffective as Mr N likely had already considered the risks and attempted to mitigate them. Mr N has made submission that any warning likely would have made him take a step back and consider his choices more carefully. But I don't agree that they would have. Wise weren't able to impart any further measures to mitigate these risks further to what he'd already carried out, so I don't think he would have taken a step back and ultimately not followed through with the transactions.

For these reasons, I find it unreasonable to expect Wise to refund Mr N the funds lost as a result of the fraud.

Was enough done to recover Mr N's funds?

Taking into account good business practice and what I deem to be fair and reasonable, Wise are generally expected to assist its customers in recovering misappropriated or misdirected funds when put on notice.

Here, Wise has told our service that it didn't attempt to recover the funds Mr N had stolen from him. Its reasons for this are:

- *The payments were made to international accounts using USD outside of the United States. It said that recovery attempts of these types of payments are rarely successful.*
- *The payments were made to accounts in Hong Kong and the United Arab Emirates. It said that attempts to recover funds from banks within these locations were consistently faced with complete lack of response.*
- *Mr N had made the first payment to the accounts five months prior to reporting the fraud. He'd also made the last payment to the account one month prior to reporting. Based on past experience, it pointed out that fraudsters tend to remove funds from beneficiary accounts within hours of completion.*
- *It's not been contacted by law enforcement within the UK or abroad, which it says is normal practice when being reported. It said that this meant Mr N's claims had not been substantiated by any other source.*

I disagree, in part, with the points highlighted by Wise. By its own admission, these attempts at recovery are rarely successful or responded to by the international beneficiary *banks. And this is supported by the experience this service has seen on a number of claims. But rarely doesn't equate to never. Whilst it is rare, there have been occasions that beneficiary bank accounts retain the money lost and agree to indemnify them to the sender. So, I don't think it reasonable that Wise decided to not even attempt recovery despite there being a remote chance it could have been successful.*

I also disagree with its last point regarding a lack of contact from law enforcement agencies being cause to find Mr N's claims as unsubstantiated. Mr N has provided substantial evidence to show he's been the victim of a fraud, and this was accepted during his claims process with Wise. Furthermore, I feel it important to highlight that lack of contact from law enforcement agencies is common. Criminal complaints are often not taken forward due to, but not limited to, a lack of viable lines of enquiry, jurisdiction issues and resourcing problems.

Having said this, I think its other points are well founded. Our service is unable to find out if the funds remained in the account at the point in which Mr N reported the fraud. But on balance, I agree that they were likely removed from the account prior to the report being made. Fraudsters are very much alive to the processes financial businesses take when being made aware of fraud. And in order to maximise their income from criminal activities, they do tend to remove the funds from the beneficiary account within a short period of time after they've credited. This is to prevent them being frozen and returned to the victim of crime.

As Mr N didn't report the fraud until some weeks after his last transfer, I find it more likely than not that the funds were removed prior to this. As such, I don't find that recovery in these circumstances would have likely been successful.'

Wise didn't have any further points to add. But Mr N did provide further comment; he said:

- He'd not witheld any information relating to events that had taken place from Wise.
- He felt that his consideration toward risk would have meant that had Wise advised him against making the payment, he wouldn't have continued with it.
- He confirmed that the crime was reported to Police in all jurisdictions that were linked to fraud.

As both parties have now responded to my provisional findings, I'm now in a position to issue my final 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.

Having considered the further comments made, I don't intend to depart from my provisional findings. Mr N has however made one point that I'd like to address as I feel it's relevant to the provisional findings made.

Mr N believes that his consideration toward fraud risk prior to making the transactions was a strong indicator that he'd have likely not gone ahead with the transactions had he been told not to do so by Wise. While I understand Mr N's point here, I don't think it was reasonable for Wise to advise him not to make the payment.

Regulated financial businesses are expected to intervene in unusual or out of character payments to ensure their customers aren't at risk from fraud. They're also expected to advise against transfer—or even go as far as preventing a payment—if it's obvious that a payment is as a result of fraud. But it wasn't obvious that Mr N was the victim of fraud as he'd already carried out a number of mitigating actions to ensure he wasn't at risk. And had he told Wise about these actions during any intervention, I don't think it would have then been reasonable to advise Mr N not to proceed with the payments as they appeared to be for a genuine purpose.

I've already covered in my provisional findings above why I think any warning or advice regarding investment frauds would have likely been ineffective.

I know Mr N will be disappointed by my findings, but I don't think it's reasonable for Wise to be held liable for his loss in the circumstances of this complaint.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 24 February 2022.

Stephen Westlake
Ombudsman