

The complaint

Mrs H complains that TransferWise Limited (Wise) won't refund the money she lost when she fell victim to a scam.

What happened

What Mrs H says

Mrs H says that in late 2018 she opened an online trading account with a company I'll call T. She thought T was carrying out trades on her behalf, but this wasn't the case and in fact T took her funds fraudulently. Mrs H says that she completed some transactions using her debit card but on T's instructions most funds were transferred abroad through Wise. On 11 January 2019 Mrs H transferred £32,000 through Wise and on 16 January she transferred £21,000.

By March 2019 Mrs H says she became aware that she'd been involved in a sophisticated binary options scam. The account manager she was dealing with became aggressive and asked for more money and a request to withdraw funds wasn't accepted. In April 2019 she sought professional advice about how to recover her lost funds and on 3 May 2019 reported the scam to Wise. Wise said it would try to recall her funds that day, but this didn't happen, and Wise provided her with poor customer service.

Mrs H would like Wise to provide her with a refund. She says Wise violated its terms and conditions in allowing the transfers for investment purposes and didn't complete enough checks before making the payments. In addition, Wise failed to attempt to recover her funds. Mrs H says she has lost her life savings, which has had a huge impact on her and her husband.

What Wise say

Wise has pointed out that Mrs H didn't hold an account with it but used its money transfer service on two occasions. Its fraud detection tools didn't flag the two payments because they weren't unusual or suspicious. Wise says that it is commonly used for large money transfers like the ones Mrs H made and is cheaper than using a high street bank. And there was nothing to suggest the payments were being made for an investment – the payee name sounded more like a media or design company.

In respect of recalling the payments, Wise suggested Mrs H contact the payee herself as any attempt to do so relied on the cooperation of the recipient of Mrs H's funds.

Our investigation so far

The investigator who considered Mrs H's complaint initially recommended that it be upheld but changed his mind after receipt of additional information from Wise. In summary, he said:

- Wise isn't a bank, operates differently to one and is regulated differently so many of the regulations that apply to banks don't apply to electronic money institutes like Wise.
- Mrs H didn't have an account with Wise but made one-off transactions for large sums. This kind of activity isn't unusual, and neither is making an international payment through Wise. Also, because Mrs H didn't open an account and hadn't used

Wise before, Wise had no historic account activity to compare Mrs H's transactions with.

- Mrs H completed the transactions online so there was no conversation with Wise and the payment process didn't involve asking Mrs H why she was making the payments. So there was nothing to put Wise on notice that Mrs H might be at risk of becoming a victim of fraud.
- Wise didn't do what it should have done to attempt to recover Mrs H's funds. On balance though, the investigator felt that even if Wise had contacted the payee as expected it wouldn't have made a difference as funds are removed by fraudsters very quickly. Also, international banks aren't subject to the same regulations as UK banks and need authority from the account holder to remove funds.

Mrs H didn't agree with the investigator and asked that an ombudsman review her complaint, so it's been passed to me to consider. She said:

- Wise is a large and profitable organisation that is allowing payments for investments to be made outside of its terms and conditions without controls to prevent and rectify fraud.
- Although Wise promised to recall the funds it didn't do so.
- She hasn't received an apology or compensation or anything to suggest lessons have been learned from her experience.

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'm very sorry that Mrs H has lost so much money in a cruel scam. I need to decide whether it would be fair and reasonable for Wise, in all the circumstances of this case, to be held responsible for this loss. Overall, I've decided that it wouldn't and will explain why. I should also make it clear to Mrs H that I can only look into the actions of Wise and not T.

Should Wise have done more to stop the payments being made?

I've thought carefully about Wise's obligations in this case, particularly given that Mrs H was a new customer without previous activity to compare her actions against. Mrs H only used Wise to make the two transfers I have discussed above.

Wise is an electronic money institute (EMI) and not a bank so isn't subject to the same expectations set out in guidance and regulation as a bank when it comes to fraud prevention. Wise should execute payment instructions without undue delay. And as a starting point there is a presumption that liability for authorised payments is on the payer, even where it might've been made as part of a scam.

I think Wise might be liable for reasonably foreseeable losses if, in breach of its duty of care, it fails to act on information which ought reasonably to alert a prudent authorised payment institution to potential fraud or financial crime by, or against its customer. But I don't think Wise has failed in its obligations to Mrs H in this case. I've not seen any evidence to suggest Wise knew or ought reasonably to have known the payee account was involved in fraud.

I'm persuaded Mrs H's use of Wise's services was broadly in line with what it would expect of a customer making international payments and would not have stood out as unusual or suspicious. Wise specialises in international payments and customers frequently use its services to make significant international transfers. The transactions were completed online

and there was no conversation between Wise and Mrs H about them and Wise's process does not involve asking the purpose of a payment. The transfers were also the first Mrs H made through Wise, so it had nothing to compare them with. So I don't consider Mrs H's transfers would have stood out as being remarkable, suspicious or unusual to Wise.

Mrs H says Wise violated its terms and conditions by allowing the transfer of her funds for investment purposes. Mrs H has set out Wise's Acceptable Use Policy which says,

" We do not support businesses or transactions which are involved in any of the following categories..."

1.2.2 Financial and other professional services

- a. Binary options.*
- b. Escrow services...*
- c. Companies involved in the exchange or trading of cryptocurrencies..."*

This policy sets out what Wise won't accept and gives Wise options if a customer breaches the Acceptable Use Policy. It doesn't provide a customer with rights or mean that because Mrs H's payment was in fact for binary options Wise is liable. In any event, I don't believe Wise had any reason to know Mrs H was transferring funds in relation to binary options. Mrs H's funds were sent to an intermediary, the name of which isn't one I'd associate with an investment company. There wasn't anything else to indicate Mrs H was paying T or was involved in binary options or cryptocurrency. Wise has though taken steps to ensure no further payments can be made to the intermediary that received Mrs H's funds.

Did Wise do enough to recover Mrs H's funds?

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

Wise didn't attempt to recover Mrs H's funds. I don't consider this was reasonable and I think Wise should have contacted the payee as it initially said it would. Our service is unable to find out if the funds remained in the account when Mrs H reported the fraud. But on balance, I agree that they were likely removed from the account prior to the fraud report being made to Wise. Fraudsters are very much alive to the processes of financial businesses when they are made aware of fraud. And in order to maximise their income from criminal activities, they tend to remove the funds from the beneficiary account very quickly. This is to prevent them being returned to the victim of crime.

As Mrs H reported the scam some months after the last transfer, I find it more likely than not that the funds were removed prior to this. So although I consider Wise should have contacted the beneficiary bank I'm not persuaded that doing so would have made a difference in this case. Also, because Mrs H made international transfers any recovery of funds required the agreement of the recipient. As funds were sent as part of a scam, it was very unlikely the recipient would agree to return Mrs H's funds.

Mrs H has also referred to the fact that she's seen nothing to suggest Wise has learned any lessons from her experience. This service looks at the individual circumstances of each complaint brought to it and isn't a regulator.

Overall, whilst I'm sorry to hear of Mrs H's loss, I can't reasonably ask Wise to refund her.

My final decision

For the reasons set out I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 1 April 2022.

Jay Hadfield
Ombudsman