

## The complaint

Mr N says TransferWise, now Wise Payments Limited ("Wise Payments"), didn't do enough to help when he fell victim to a HMRC impersonation scam and that it should reimburse him.

## What happened

The details of this case have been clearly set out by our investigator. As such, the facts are well-known to both parties, so I don't need to repeat them at length here.

In summary, Mr N fell victim to a HMRC impersonation scam and was tricked into making payments to a scammer. Mr N made multiple payments from two accounts he held, one of which was Wise Payments. And then later on in the day, Mr N opened / set up another account with a different provider and made further payments.

On 8 June 2021, Mr N made the following payments from his Wise Payments account:

Date	Time	Amount	Account
8 June 2021	11:43am	£1,498.32	Account 1
8 June 2021	12:25pm	£1,876.32	Account 2
8 June 2021	12:55pm	£1,998.32	Account 3
8 June 2021	13:18pm	£1,886.32	Account 4
8 June 2021	15:46pm	£1,990.32	Account 3

At around 5pm on 8 June 2021, Mr N uncovered it was a scam when he tried contacting an official number for the Ministry of Justice who's working hours had finished for the day.

Mr N contacted the businesses, from where he had sent the funds, straight away to report the matter.

Wise Payments logged Mr N's fraud claim. Unfortunately only £1,998 was able to be recovered from one of the accounts and this was refunded / returned back to Mr N on 12 July 2021.

Ultimately Wise Payments, in its formal response to Mr N on the matter, considered it wasn't responsible for the loss and it had followed Mr N's instructions to make the payments. It also considered it had sought to recover the funds promptly once notified of the fraud.

Unhappy, Mr N referred the matter to our service.

Our investigator looked into the complaint and didn't recommend it be upheld. They didn't think Wise Payments ought to have done more to identify the payments as potentially fraudulent in the circumstances. And they also felt Wise Payments couldn't have reasonably done anymore to try and recover the funds.

As Mr N disagreed, and as the matter hasn't been resolved, it's been passed to me to decide.

## **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'm not upholding Mr N's complaint. I'll explain why.

Before I explain my findings, I would like to clarify at this point that this decision only focuses on the actions of Wise Payments and the payments Mr N made from his account with it. Mr N has other complaints about other financial businesses involved – and those are being looked at separately under different complaint references.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a payment service provider – in this case, Wise Payments as an electronic money institute ("EMI") – is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account.

I note that Mr N has said that our service should consider the payments made as 'unauthorised' as he considers that he didn't authorise the transactions with a clear mind and didn't know he was talking to a sophisticated fraudster. Mr N therefore considers the money was taken without his knowledge or consent. I can understand why Mr N may think this but the payments he made were in fact 'authorised' by him. This is because, although Mr N was being tricked into making the payments, he did in fact make the payments himself – through his account with Wise Payments. And under the Payment Service Regulations 2017 ("PSR's"), which are the relevant regulations in place here, the payments are considered as 'authorised' by Mr N. And under the PSR's this means Mr N is responsible for the payments. That remains the case even though Mr N was the unfortunate victim of a cruel scam.

Wise Payments is an EMI, so Mr N's account with it isn't a bank account and isn't subject to the same expectations set out in guidance and regulation as a current account, or bank, would be when it comes to fraud prevention.

But that doesn't mean Wise Payments had no obligation to Mr N. I'm satisfied that Wise Payments does have a duty of care to treat its customers fairly under PRIN 2.1 as set out in the Financial Conduct Authority ("FCA") handbook. And, I'm satisfied Wise Payments is required to be on the lookout for indications of financial crime - I can see that the terms and conditions available on Wise Payment's website reflect that it will take action if it suspects, amongst other financial crimes, fraudulent activity.

So I'm satisfied Wise Payments ought reasonably to have some sort of systems in place to monitor the transactions on its accounts, but I also think any additional checks it carries out into suspicious transactions should be proportionate to its relationship with its customers.

Taking this into account I think Wise Payments might be negligent and liable for reasonably foreseeable losses if, in breach of its duty of care, it fails to act on information which ought reasonably alert a prudent authorised payment institution to potential fraud or financial crime by, or against its customer.

So in this case, I need to decide whether Wise Payments acted fairly and reasonably in its dealings with Mr N when he made the payments, or whether it should have done more than it did.

I've thought about this carefully. Taking the above into consideration, when I look at the payments Mr N made – I can't fairly say that there was anything unusual or remarkable about the payments or the amounts that reasonably ought to have alerted Wise Payments to the possibility Mr N was potentially at risk of financial harm, where I would expect Wise Payments to have concerns and step in and question Mr N further about the payments.

EMI's process a high volume of transfers and transactions each day. And an EMI has to strike a balance as to when it should possibly intervene on a payment against not holding up or delaying its customer's requests.

In this case, Mr N's account was fairly active, it received incoming credits and he had used it to make transfers and also used it to make card payments and bill payments. I can see Mr N had enough funds in his account each time he made the payments. The payments weren't clearing or emptying Mr N's account and the amounts didn't increase in value which can also be a common feature of a scam. And while Mr N made several payments to new payee's over the course of 8 June 2021, I don't think this is in itself unusual – given this is often a purpose of EMI's. This means I can't fairly say that the payments were so out of character that there could reasonably be grounds for Wise Payments to be suspicious Mr N may be a victim of fraud. So, I think the fact that Wise Payments didn't flag the payments as suspicious was fair and reasonable in the circumstances.

I have also looked to see whether Wise Payments acted promptly and in a timely manner in trying to seek to recover the funds once it was notified of the scam. Wise Payments reached out to the receiving businesses on 9 June 2021 – so the day after Mr N reported the scam. There may well have been scope for Wise Payments to have acted quicker here. However in this case, I'm not satisfied it would have made a difference. I'll explain why.

Unfortunately, it is common for fraudsters to withdraw or move the money on as quickly as possible – and in this instance all of the funds had either been moved on or withdrawn instantly. £1,998 was recovered, as that remained in one of the receiving accounts. The receiving bank had blocked that account when the scammer, after Mr N had made the payment into that account, then tried to make a payment from the account. As this was blocked, the funds from this receiving account was then subsequently able to be recovered and returned to Mr N.

I note Mr N was concerned that Wise Payments didn't provide any warnings to him when the payments were made. A new voluntary code called the 'Contingent Reimbursement Model' (The CRM Code) was implemented in May 2019 that some banks and building societies signed up to.

The CRM Code sets out that banks and building societies are required to provide a customer with an effective warning about scams when making a payment to try and prevent fraud. Warnings are typically identified through customers selecting a payment purpose which then enables a bank or building society to provide information about the common features of scams that its customer may be at risk of falling victim to.

However, the CRM Code is voluntary and Wise Payments isn't a signatory of the CRM Code. So Wise Payments' obligations, when Mr N made the payments, was to protect its customers from fraud by being on the lookout for transactions that were unusual or out of character and to step in to prevent their consumer from being at risk of financial harm. In this case, I don't consider Mr N's payments were remarkable or unusual, so I don't think it was unreasonable for Wise Payments not to be concerned about the payments for the reasons I provided earlier. And as Wise Payments aren't a signatory of the voluntary CRM Code it wasn't required to provide Mr N with any warnings when he made his payments. Though I do realise that won't be of any comfort to Mr N.

Overall, while I appreciate Mr N has been the unfortunate victim of a scam, I think Wise Payments' decision not to refund him in this instance was fair and reasonable in the circumstances. I say this because it followed Mr N's instructions to make the payments and I haven't seen any reason why it shouldn't have done this. And unfortunately Wise Payments was only able to recover £1,998 of Mr N's losses.

### **My final decision**

For the reasons 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 8 April 2022.

Matthew Horner  
**Ombudsman**