

Complaint

Mr H complains on behalf of A (a limited company) that PrePay Technologies Limited didn't do enough to protect him when he was the victim of fraud or to recover the money he'd lost.

Background

Mr H is a director of A, a limited company which has an account with PrePay. In November 2020, he received a phone call from someone claiming to be an employee of Her Majesty's Revenue and Customs (HMRC). He was told that he owed tax in relation to the activities of A. He was told that if he didn't pay the outstanding tax, he'd be arrested and face criminal prosecution. He believed he was speaking with an employee of HMRC and so he agreed to make a payment. He made two transfers from his account with PrePay of £2,250 and £2,736.

Unfortunately, he wasn't dealing with a legitimate representative of HMRC, but a scammer. He realised he must have fallen victim to a scam when he was asked to make further payments. He contacted PrePay to let it know. It investigated his complaint but declined to pay him a refund.

Mr H was unhappy with this and so he referred a complaint to this service. It was looked at by an Investigator who said that PrePay should've recognised that these two payments were out of character and indicative of a higher risk of fraud. It shouldn't have processed them without first asking Mr A several questions to satisfy itself that he hadn't been targeted by a scam. The Investigator thought that, if this had been done, it would have come to light that Mr H had been targeted by a scammer.

The Investigator also considered whether Mr H should bear some responsibility for his loss. However, he was persuaded that he'd acted reasonably. He said the call appeared to have been made from a number genuinely connected with HMRC. Mr H wasn't aware that it was possible to spoof phone numbers so understandably took the call at face value.

PrePay disagreed with the Investigator's opinion. It said:

- Its fraud detection systems are annually audited by the regulator and are considered compliant.
- Mr H had a business account, not a personal one. It argued that identifying an errant payment is more difficult on a business account and that it can't realistically block payments of this size given the impact it would have on its business customers more generally.
- Mr H shouldn't have attached so much significance to the fact that the scammers knew information about his company. The information they relied on is in the public domain on the Companies House website.
- Mr H should've known what his tax liabilities were and recognised that the call from the scammers couldn't have been legitimate.

Because PrePay disagreed with the Investigator's view, the complaint was been passed to

me to consider. I issued a provisional decision on 16 May 2022 in which I said I intended to come to a different outcome to that reached by the Investigator. I said:

It is common ground that Mr H authorised the scam payments. He was tricked by the scammers into instructing PrePay to transfer those sums on the basis that he was paying off an outstanding tax liability. I accept that this was an 'authorised payment' even though Mr H was the victim of a scam. He used his security credentials to request the payments. He didn't intend the money to go to the scammers. Nonetheless, under the Payment Services Regulations 2017 and the terms and conditions of his account he 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 PrePay 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 banks are generally more familiar with than the average customer.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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 from fraud.*

PrePay therefore needed to be on the lookout for payments that were out of character and where there was a greater risk of fraud. I accept that it was unusual for A's account to transfer around £5,000 in one day. However, this was split across two payments.

The first payment was for £2,250. In isolation, I wouldn't expect PrePay to treat a payment of this size as being indicative of a fraud risk. It did represent a change in the use of the account. However, PrePay needs to strike a balance between carrying out the legitimate payment instructions of its customers and monitoring accounts for fraud. This payment was not large enough for PrePay to have reasonably assumed it represented an increased risk of fraud.

However, by the time Mr H made his second payment in quick succession, I think it ought to have realised that there was a risk that he'd had been targeted by a fraudster. It should not have processed the second payment until it queried it with Mr H to satisfy itself that there was no meaningful risk of fraud. On balance, I think it's likely that, if Mr H had been asked about this payment, PrePay would've been able to uncover that he'd been targeted by a fraudster and so prevented him from making that payment. Unfortunately, the second payment appears to have been made around 20 minutes after the first one. It had already been removed from the receiving account by this point, so PrePay couldn't have recovered the earlier payment even if it uncovered the scam earlier.

Contributory Negligence

The Investigator didn't think Mr H should be considered partly responsible for his losses. However, I don't share that conclusion. He told PrePay that the scammers told him "not to tell anyone what this money is for" and that he was told to not tell PrePay that the payment was to HMRC because it would be blocked. I'm surprised that Mr H wasn't concerned by this request. A genuine caller from HMRC wouldn't ask him to conceal the purpose of the payment in this way. When Mr H was asked to do this, he ought to have recognised the risk that he wasn't dealing with a legitimate caller. I also think Mr H should've questioned why he was being asked to settle an outstanding tax bill by making a payment to a private individual's account.

PrePay has said that Mr H should've been aware of what his outstanding tax liabilities were and so recognised that this call was unlikely to be genuine. He says that he was told that the alleged tax liability was in connection with the activity of A. I've looked at the accounts for A and I think Mr H should've been surprised to learn that he had such a large outstanding tax payment.

Overall, I think Mr H ought to have recognised the risk that this wasn't a genuine contact from an HMRC employee and so I think it's fair and reasonable for him to bear responsibility for 50% of the loss.

Recovery of funds

Mr H has said the PrePay didn't act quickly enough to recover his money from the receiving account. But from the evidence I've seen, I don't think it would've made any difference. The payments he made were removed from the receiving account after 8 minutes and 5 minutes respectively, so even if PrePay had acted more quickly it wouldn't have made any difference.

I directed PrePay to refund 50% of the second payment Mr H made to the scammer (£1,368) and to add on 8% simple interest per annum. Mr H disagreed with my findings. He said that:

- PrePay didn't do enough to recover the money he lost to the scam. If it had acted more quickly, it would've been able to recover his money.
- The payment he was told he had to make wasn't just to cover an outstanding tax liability, but also to cover legal costs associated with the case against him.
- He was told that the payments were being made to a private individual and that person was his court appointed solicitor who was handling the matter on his behalf.
- He hadn't been a company director before, and he'd had no previous involvement with HMRC.

Findings

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 persuaded to depart from the view I reached in my provisional findings.

Mr H says that, PrePay could've recovered the money he lost to the scammers. He made a separate payment to the scammer from an account he has with a different bank and that was successfully recovered. He thinks that if PrePay had acted more quickly it could've recovered his funds in the same way. However, it looks like Mr H notified it of the scam at around 3.15pm on 25 November 2020. All of his funds had been removed from the receiving account by 11.58am the same day.

Mr H was told that the payment wasn't merely to cover outstanding tax, but legal fees too and that the payment was to be made to his solicitor. Nonetheless, it's surprising that he took this at face value given that his company didn't appear to have done very much trading and it would've been hasty and punitive for Mr H to have faced criminal sanctions for what could only have been administrative oversight. I accept that this was his first appointment as a company director (although he had another appointment by the time of the scam) and that he'd had no dealings with HMRC in the past. I also recognise that the scammers must have sought to put him under significant pressure to pay up and that the fear of the potential consequences must have made it seem very real. But for the reasons I've already outlined in my provisional findings, I think there were several clear indicators that this wasn't a legitimate call. I'm not persuaded that it was reasonable for him to have proceeded in the light of that risk.

Final decision

For the reasons I've set out above, I uphold this decision in part.

If A accepts my decision, PrePay Technologies Limited should pay him £1,368 without delay. It should add on 8% simple interest per annum to that sum calculated to run from the date A fell victim to the scam until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 12 July 2022.

James Kimmitt
Ombudsman