

The complaint

Ms J is unhappy that Wise Payments Limited won't refund her money she lost as a result of a fraud.

What happened

Ms J was contacted about a potential cryptocurrency investment opportunity, which she was eventually persuaded to invest in.

On 23 August 2021 Ms J set up a Wise account, and on the same day, transferred £3,423.31 to an account held with a third-party business: as instructed by the investment company contact. Unfortunately, this later transpired to be a fraud.

R, a limited company acting on behalf of Ms J, complained to Wise about the payment made as it felt Wise could have done more to protect Ms J from the fraud. However, after reviewing the circumstances of the complaint, Wise didn't agree. It pointed out that Ms J had authorised the payment and that its terms and conditions clearly state that it would not be liable for any loss beyond its control – such as cases of fraud.

Ms J remained unhappy with the outcome, so her complaint was referred to our service. After considering the evidence provided by both parties, the Investigator concluded that Wise hadn't made an error. Broadly, they pointed out that the payment wasn't out of character or usual considering it was the first payment on the account. They therefore didn't think Wise were unreasonable in not intervening in the payment.

R, on behalf of Ms J, disagreed with the Investigator's assessment. It didn't agree that the account opening being the same day as the transaction detracted from the payment displaying characteristics of fraud. It felt that Wise did have an obligation to intervene, and had it done so, likely would have prevented the payment.

As R, on behalf of Ms J, disagreed, the complaint has now been passed to me for a 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.

It's excepted by both parties here that Ms J authorised the payment subject to this complaint. So, when taking into consideration the Payment Services Regulations 2017, and the terms and conditions of the account, Ms J is presumed liable for the payment in the first instance.

However, taking into account the law, regulator's 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 payment service providers 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 decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I also acknowledge the sometimes-difficult balance payment service providers have in fulfilling its obligation to process payments in line with its customer's instruction against identifying, and intervening in, potentially fraudulent payments.

Here, Ms J opened her Wise account on the same day the fraudulent payment was made. And this payment was the first payment Ms J had carried out on her account. This meant that Wise had no previous history on Ms J's account that allowed it to assess if the payment was unusual or out of character in comparison.

R, on behalf of Ms J, argues that this shouldn't have precluded Wise from assessing the payment as at risk, as the payment was substantial and falls in line with known fraud patterns. But I don't agree. While I have no doubt the payment amount was substantial for Ms J, that wouldn't have been apparent to Wise at the time. There were no red flags to consider here as any payment Ms J would have made would have been to a new payee. And the amount couldn't be deemed as out of character as Ms J hadn't made any other payments prior to this one. It also held no information on its systems to suggest Ms J was otherwise at risk or vulnerable to fraud at the time.

I also disagree with R regarding its submission that the payment fell in line with known fraud patterns. I don't find it reasonable to expect a business to automatically treat all first payments made from an account as a potential risk where no other risk indicators exist. This is particularly so considering the number of payments a business processes on a daily basis.

For the above reasons, I'm not persuaded Wise had made an error in not intervening in the payment.

I've also considered if Wise took the appropriate action when it was made aware of the fraud.

Ms J reported the matter to Wise through her representative in February 2022: almost six-months later. Wise did contact the receiving bank, but it didn't do this until eleven days later. While this is well beyond the time I'd reasonably expect a business to attempt to recover the funds, I don't think this made a difference in the circumstances of Ms J's complaint.

It's common in cases such as this that fraudsters remove money from the receiving account at the earliest opportunity. Fraudsters are alive to the fact that once payment service providers have a fraud reported to them, the funds are recalled. This means that the fraudsters tend to remove the money from the receiving account to prevent the loss of their ill-gotten gains.

As Ms J reported the matter almost six-months after the payment had taken place, I find it unlikely the funds would have still been available in the account.

Furthermore, the receiving bank refused to indemnify the funds anyway. And as Wise has no control over the receiving banks actions, it wouldn't have been able to force the recall of the funds anyway if they'd have still remained in the account.

For these reasons, I don't find Wise would have been successful in recovering Ms J's funds to her account, regardless of when it took action to recover them. It would therefore be unreasonable to expect Wise to refund Ms J on this basis.

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 Ms J to accept or reject my decision before 22 December 2022.

Stephen Westlake
Ombudsman