

The complaint

Ms K complains that Wise Payments Limited ('Wise') won't refund money she lost to a scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it all here. But briefly, and based on the submissions of both parties, I understand it to be as follows.

Ms K was introduced to a job opportunity by a friend with a company I'll refer to as 'PT'. Ms K says she was promised she could make money by helping with social media engagements across a number of different social platforms.

Ms K said her friend had taken a job with PT and made some investments and that she was able to withdraw some of the money she'd made. Ms K says this convinced her the employment opportunity was legitimate.

Ms K told us she was added to a messaging group with numerous other members. She says she asked questions to the group and she received good reviews.

Following this, Ms K decided to proceed and take part in the job opportunity. She created a profile, download an app for PT and made payments, which she believed were deposits to unlock a number of tasks that she needed to complete to earn money.

The payments Ms K made from her Wise account as a result of the scam are as follows:

Date	Payee	Amount
23/01/2022	Payee 1	£500
27/01/2022	Payee 2	£300
01/02/2022	Payee 3	£1,300
06/02/2022	Payee 4	£1,100
	Total loss	£3,200

I understand on 14 February 2022, PT's servers went offline. Ms K thought this would be down for a few hours. However, it remained offline and PT became uncontactable.

Ms K reported the scam to Wise the same day. Wise said it would not be refunding Ms K the money she'd lost. Wise said the payments she made didn't appear as out of character. The payments Ms K made as part of the scam were sent to four other accounts held by Wise. Wise attempted recovery of the funds on 15 February 2022. It then made further recovery attempts on 22 February 2022. At this point, Wise attempted to recall payments that had been sent out of its customer's accounts. Wise later informed Ms K that no funds remained. Wise also said that under its Customer Agreement with Ms K, it cannot be held responsible for unforeseeable loss and damage.

Unhappy with Wise's response, Ms K brought her complaint to this service. One of our Investigators looked into the matter and she initially didn't recommend the case be upheld. She didn't think the payments Ms K made were so remarkable that Wise ought to have been

concerned. Having looked at the previous activity, she said Ms K mainly used the account to make transfers which tends to be the way this type of money remittance account is used. While she noted the payments were made to new payees, she didn't think the payments were made in such quick succession that they ought to have stood out as unusual or suspicious to Wise. She didn't think Wise had missed an opportunity to identify the payments as being made as part of a scam.

Our Investigator thought about whether Wise took the steps it should have once it was aware of the scam. She said that had Wise contacted the receiving bank/payment service provider (PSP) as soon as it was aware of the fraud, she didn't think it would have made a difference in the circumstances. She thought it was likely the funds would have been moved from the receiving accounts (the accounts the funds were sent to), given the time between the dates of the payments and the scam being reported.

Ms K responded to our Investigator's view and enquired about the recovery of funds after noting it was eight days between her reporting the matter and Wise contacting the receiving bank/PSP, according to what our Investigator had set out in her view.

Following this, our Investigator requested further information from Wise in its capacity also as the receiving bank/PSP to see if any funds remained. After receiving this, she issued a second view on the case. She explained that her view remained the same about the payments Ms K made. She remained of the view that the payments weren't so remarkable in amount and frequency to have caused Wise concern. However, she noted there were enough funds in the receiving accounts at the time Ms K reported the scam, which she said would've covered the amount of money Ms K had sent. Our Investigator felt that had Wise contacted the receiving bank/PSP the same day Ms K reported the scam, it would've been able to recover her funds. She recommended Wise reimburse Ms K for all four-scam payments, alongside 8% simple interest.

Wise told our Investigator that it could only start the recovery process after it received a police report, which Ms K obtained on 17 February 2022. Wise, at this point, also informed our Investigator that it had received two recoveries following its attempts. This was a recovery of £1,300 and £300 (£1,600 in total).

Our Investigator thought about what Wise had said. But she didn't think it was reasonable to wait for a police report. She thought Wise ought to have contacted the recipient PSPs/banks as soon as it had been made aware of the scam. From the information Wise had provided she could see funds remained in the recipient accounts when Ms K raised the matter, so she concluded Wise should reimburse Ms K the money she'd lost.

Wise disagreed with our Investigator's view. In brief, it maintained that it was reasonable for it to ask for a police report. It said that the scam report received by its customer support does not hold enough legal weight in order to be able to touch funds from another Wise account.

Further investigation

On reviewing the complaint for a final decision, I reached out to Wise in an attempt to mediate the complaint. I also enquired about the two later recovery of funds and whether the amount of £1,600 had been paid to Ms K.

Wise replied to say it wished to receive a final decision. It acknowledged that the recovered funds of £1,600 had not yet been refunded to Ms K. It offered its apology for this and offered £250 compensation for this delay. Wise has since told us, on 26 June 2023, that the amount of £1,600 has now been reimbursed to Ms K's Wise account.

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 uphold this complaint. I will now explain why.

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 PSP – in this case, Wise 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.

Here, while Ms K was tricked into making the payments, she did in fact make the payments herself. And under the Payment Service Regulations 2017 (PSRs), which are the relevant regulations in place here, the payments are considered as 'authorised' by her. And under the PSR's this means Ms K is responsible for the payments. That remains the case even though Ms K was the unfortunate victim of a scam.

Wise is an EMI, so Ms K'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 had no obligation to Ms K. I'm satisfied that Wise 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 is required to be on the lookout for indications of financial crime - I can see that the terms and conditions reflect that it will take action if it suspects, amongst other financial crimes, fraudulent activity.

So I'm satisfied Wise 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.

In this case, I need to decide whether Wise acted fairly and reasonably in its dealings with Ms K when she made the payments, or whether it should have done more than it did.

When thinking about the payments Ms K made, I've kept in mind that 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.

Looking at the payments made in this particular case, 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 to the possibility Ms K was potentially at risk of financial harm, where I would expect it to have concerns and step in and question Ms K further about the payments.

While I accept the payments made were sent to four new payees, I don't find this in and of itself ought to have put Wise on notice that Ms K might have been at risk of financial harm. I say this because this is a feature of an EMI – that money is regularly sent to new payees. I also have to take into account that the payments weren't made in such quick succession – with there being a few days in-between each of the payments. So overall, I can't fairly say that the payments could be considered so out of character that there could reasonably have been grounds for Wise to be suspicious that Ms K may be the victim of fraud to an extent whereby I would expect it to intervene.

Should Wise have done more to try and retrieve Ms K's money?

I've also looked to see whether Wise acted promptly and in a timely manner in trying to recover the funds once it was notified of the scam.

Wise in its submissions to us said the recovery process could only be started after it received a police report, which Ms K obtained on 17 February 2022. The payments Ms K made in this case were sent to four other Wise accounts.

I reached out to Wise to discuss the recovery process when a customer notifies it that they have been the victim of fraud. Wise in its response said from a civil law perspective, its accountholders were deemed the owner of the funds on the balance of the account. It says it considers asking for a police report an appropriate measure before removing funds from an account without the accountholders consent.

I've thought carefully about what Wise has said, but as Ms K's payment service provider, Wise had an obligation to act on her notification of fraud. The process followed by UK banks and payment service providers for reporting payments made as a result of authorised push payment (APP) fraud is for the payer's payment service provider to send notification to the recipient bank/PSP. One of the reasons for this is to mitigate its customer's losses. I find Wise had an opportunity to do so promptly here, given that the accounts Ms K sent the payments to, were also Wise accounts.

Whilst I must have consideration of the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I also have a duty to resolve a complaint based on what is fair and reasonable in the individual circumstances of a complaint. Taking everything into account, I don't think it was fair or reasonable for Wise not to have taken the necessary steps to start the recovery process upon Ms K notifying it of the scam. And I'm not persuaded Wise needed to wait for a police report before being able to do so.

Our service's approach to recovery of funds would usually be to consider whether any of the complainant's (here Ms K's) funds remained at the point the recipient PSP reasonably ought to have blocked the account. This could arise from its own monitoring obligations and/or it being put on notice that the account in question was in receipt of fraudulently obtained funds. Here Wise, as the receiving PSP, adopted the approach of returning the money on a first come first serve basis.

Had Wise taken the steps I reasonably would have expected it to have taken when Ms K reported the matter to it (as a customer of theirs), as I've explained above, working to the principle it applied in returning funds, I'm persuaded Ms K would've received a refund.

In my opinion, Wise's error as Ms K's PSP (in asking her to report the matter to the police first before taking action) has had a direct detrimental impact on her, which has resulted in her not being reimbursed the money she's lost to the scam. So, I think it's only fair that Wise puts Ms K back into the position she would've been in but for it incorrectly asking for a police report.

I can see, whilst there was no obligation on it to do so, that Wise did attempt to recall payments that had been sent out of its customer's accounts – to which two later recoveries were received totalling £1,600. I understand this relates to the payments of £300 and £1,300 that Ms K made, and which Wise has now said has been credited back to Ms K's account.

Overall, for the reasons I've set out above, based on Wise's adopted approach to the remaining funds, I think Ms K has lost out as a result and so, I find it fair and reasonable that she be reimbursed the funds she's lost to this scam.

Wise in its communication with us offered £250 compensation for the delay in reimbursing Ms K the recovered funds totalling £1,600. While Wise has since told us it has now credited Ms K's account with the £1,600, I think the £250 compensation offered to reflect the delay in doing so, is fair and reasonable in the circumstances.

My final decision

My final decision is that I uphold this complaint. I require Wise Payments Limited to:

- Reimburse Ms K the money she's lost to the scam totalling £3,200 (minus the £1,600 Wise says has already been credited back to her account).
- Pay Ms K interest on the total amount at 8% simple p.a from the date Wise declined the claim until the date it refunds Ms K. I find 8% simple interest p.a to be fair and reasonable in the circumstances as, on balance, I think it's likely the money would otherwise have been used for everyday spending.
- Pay Ms K the £250 compensation offered, if not already paid, to reflect the delay in reimbursing her the later recovered funds.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 17 August 2023.

Staci Rowland
Ombudsman