

## The complaint

Miss W says Wise Payments Limited ("Wise Payments"), didn't do enough to help when she fell victim to an HMRC impersonation scam and that it should reimburse her.

Miss W is making her complaint with the assistance of a representative. To make my decision easier to read, I refer only to Miss W. I do this even where it was her representative rather than Miss W who said or provided something. I mean no discourtesy in taking this approach.

## What happened

The details and facts of this case are well-known to both parties, so I don't need to repeat them at length here. Based on the submissions of both parties I understand it to be as follows.

In summary, Miss W fell victim to a HMRC impersonation scam and was tricked into making payments to a scammer. Miss W made multiple payments from her account with Wise Payments.

On 6 June 2022, Miss W made the following payments from her Wise Payments account:

Time	Amount sent from Wise	Additional commentary
2.35pm	£490	<i>Miss W paid funds from her account with another banking provider into her Wise account to fund this transfer</i>
2.44pm	£750	<i>Miss W paid funds from her account with another banking provider into her Wise account to fund this transfer</i>
2.53pm	£921	<i>Miss W paid funds from her account with another banking provider into her Wise account to fund this transfer</i>
3.59pm	£950	<i>A family member transferred funds into Miss W's Wise account to enable Miss W to fund this transfer*</i>
4.30pm	£799	<i>A family member transferred funds into Miss W's Wise account to enable Miss W to fund this transfer*</i>

\*Miss W has since repaid her family members the funds they lent her. So, in total, Miss W – as a result of the scam – is out of pocket by £3,910.

Miss W attempted further transfers – however these were blocked by Wise Payments. It subsequently advised that the attempted transactions showed potential signs of fraud (due to incoming funds being received by a third party and then being immediately sent on to an external account).

Miss W reported the matter to Wise Payments on 7 June 2022 to see if it could help recover her funds. Unfortunately no funds remained that could be recovered. Wise Payments, in its formal response to Miss W, also considered it wasn't responsible for the loss and it had followed Miss W's instructions to make the payments. It also considered it had sought to recover the funds once notified of the fraud.

Unhappy, Miss W 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. They also considered Wise Payments intervened at a reasonable point. And with the recovery of funds, unfortunately no funds remained that could be recovered.

As Miss W 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 Miss W's complaint. I'll 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 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.

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

Wise Payments is an EMI, so Miss W'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 Miss W. 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 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 Miss W when she 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 Miss W 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 Miss W was potentially at risk of financial harm, where I would expect Wise Payments to have concerns and step in and question Miss W further about the payments.

In this case, Wise Payments didn't have any historic information about the account or what Miss W's typical usage was like. So it wasn't in a position to know whether Miss W's activity was unusual or out of character – as it had nothing to compare it against.

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.

With the first three payments Miss W made; I can see she transferred in funds from her account with an external banking provider. The transfers Miss W then made out from her Wise Payments account weren't so remarkable in their amount that I would expect Wise Payments to have reasonably considered Miss W was at risk of financial harm. And while Miss W made several payments to a new payee, I don't think this in itself is necessarily unusual – given this is often a purpose of EMI's and as mentioned above, Wise Payments had no history of account usage to compare against. This means I can't fairly say that the payments could be considered as so out of character that there could reasonably have been grounds for Wise Payments to be suspicious Miss W may be a victim of fraud to an extent whereby I would expect it to intervene. So, I think the fact that Wise Payments didn't flag the payments as suspicious was fair and reasonable in the circumstances.

I note that with the fourth and fifth payments, these were funded by third parties (family members) transferring money into Miss W's Wise Payments account. Wise Payments, because of this, stopped any further attempted payments – as it was concerned that the previous two transfers were funded by external incoming credits. As mentioned above any additional checks it carries out into suspicious transactions should be proportionate to its relationship with its customers. Given this, I think it acted reasonably in blocking any further attempted transactions considering the previous two transfers had been funded by external credits – which can be a sign its customer is potentially at risk, such as being the victim of a money mule amongst other things. But importantly I think Wise Payments acted fairly in not flagging Miss W's activity as unusual prior to this.

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 could and should have acted quicker than it did 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. In this instance the receiving firm (the firm where the funds were sent to) has provided evidence to show that all of the funds had been moved on instantly after each payment was received. So even had Wise Payments acted sooner – as I consider it should have done – and notified the receiving firm straight away, it wouldn't have made a difference here as unfortunately the funds had already moved on meaning none could be recovered.

I note Miss W's representative consider Miss W should be refunded under the 'Contingent Reimbursement Model' (The CRM Code). The CRM Code was implemented in May 2019 that some banks and building societies voluntarily signed up to. However, Wise Payments isn't a signatory of the CRM Code. So Wise Payments' obligations, when Miss W 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'm satisfied Miss W's payments weren't 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. I'm also mindful Wise Payments stepped in when it identified a potential risk.

Overall, while I appreciate Miss W has been the unfortunate victim of a cruel scam, I think Wise Payments' decision not to refund her in this instance was fair and reasonable in the circumstances. I say this because it followed Miss W's instructions to make the payments and I haven't seen any reason why it shouldn't have done this. It also identified a potential risk and stopped further payments being made. And unfortunately as the funds had already been moved on almost instantly each time, then despite Miss W reporting the matter, no funds remained that could be recovered.

### **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 Miss W to accept or reject my decision before 24 March 2023.

Matthew Horner  
**Ombudsman**