

The complaint

A company, which I'll refer to as S, complains that Wise Payments Limited ('Wise') won't refund the money it lost in a scam.

Ms B and Ms A, who are directors of S, bring the complaint on S's behalf.

What happened

S had used a supplier I'll refer to in this decision as P for some years. In May 2022 S and P communicated about balances to settle and P noted that it owed S £5,000. S then received an email purportedly from P that set out a new proposal for the payment of £5,000 to S. The email also said that the sender would update its bank details (so S could pay for an order) as an audit was being completed on the account S had previously used and the account couldn't receive any funds. Ms B and Ms A didn't know at the time, but S's email account had been hacked and this email and a subsequent email confirming the account details to make payment to had been intercepted by a scammer.

On 14 June 2022 funds were transferred from S's bank account to Wise and Ms B then transferred 100,000USD (£83,007.83) from Wise to the new account details provided. One of the directors of S reported the scam to Wise on 23 June 2022, after the genuine company P confirmed that it hadn't sent the email with amended payment details. Ms B and Ms A say that the fake emails were very similar in content to the genuine emails they had previously received, and they didn't notice the slightly different ending to the email address. The fake emails were also allegedly from the person at P they had dealt with for around six years and the scammers referred to the £5,000 P owed to S, so they had no reason to suspect anything was amiss.

Wise said it wasn't responsible for S's loss. It referred to its terms and conditions and said it can't get involved in disputes between senders and recipients. Wise also said that it was Ms B and Ms A's responsibility to ensure the legitimacy of any given transaction. Whilst Wise attempted to recall the lost funds it hadn't received a response from the recipient. Wise accepted though that it hadn't provided adequate support or communication while it was investigating the complaint and paid S £200 in recognition of this.

Ms B and Ms A, on behalf of S, were unhappy with Wise's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full, and that interest should also be paid. This was because the scam payment was unusual as it was high value and to a new payee. The investigator didn't think liability should be split for a number of reasons including the fact the fake email address was very similar to the genuine company, as was the content of the email (which also referred to an offer the genuine company had made). He felt the amount already paid in respect of the service provided was fair.

S accepted the investigator's findings, but Wise did not, so the complaint has been passed to me to consider. In summary, Wise said:

- It's unfair to hold Wise liable as a payment processor when the funds originated from S's bank account. This bank was in a much better position to understand S's normal account activity.
- Before the scam transaction S had only made six transactions over the period of a year and a half so Wise didn't have significant account activity to compare the scam transaction with.
- It's not unusual to use Wise for large transfers and S had a business account so larger transactions are commonplace.
- S used Wise's services as expected – to make large international payments with currency exchange (to USD).
- If Wise had intervened the scam wouldn't have been uncovered for the same reasons the investigator gave for not splitting liability. Ms B would have advised Wise that she was paying a known and trusted supplier and the change in payment details wasn't unexpected.

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.

In broad terms, the starting position in law is that an account provider 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. And a customer will then be responsible for those transactions that they have authorised.

It's not in dispute here that Ms B authorised the payment. She accepts she made it herself, as instructed to by the scammer. So, while I recognise that she didn't intend the money to go to a scammer, the starting position in law is that Wise was obliged to follow her instructions and process the payments. So S isn't automatically entitled to a refund.

The regulatory landscape, along with good industry practice at the time, also set out an expectation for account providers to consider the interests of their customers and treat them fairly. And I think this included monitoring accounts to look out for unusual activity and trying to protect customers from fraud and financial harm. So I've also thought about whether Wise did enough to try to keep S's account safe.

Having considered previous activity on S's account I'm satisfied that Wise ought to have intervened and asked Ms B or Ms A questions about the reason for the payment. I say this because I consider the transaction stood out as unusual. It was for a much greater amount than any previous payment on the account and was made after the account hadn't been used for a period of around fourteen months.

From November 2020 S only paid two recipients – P and another. Between November 2020 and January 2021 S made a series of payments to another party with the maximum transaction being for nearly £38,000. S started to pay P in February 2021 but had only made two small payments before the scam – in February and April 2021. The next payment was the £83,007.83 scam payment. In the circumstances, I'm satisfied the scam payment stood out as unusual.

I accept that Wise accounts can be used for one off large transfers but don't think that means Wise shouldn't monitor accounts for signs of unusual activity that might indicate a customer is at risk of financial harm.

I disagree with Wise that any intervention by it wouldn't have uncovered the scam and prevented the payments being made. Given Wise's knowledge of email intercept scams of this nature I consider that Wise ought reasonably to have asked Ms B or Ms A how the payment details were received. On being advised the payment details were sent by email

(and with its knowledge that the payment details had changed from previous transactions) I think Wise should have given a clear warning about email intercept scams and how to avoid falling victim to them. The advice ought to have covered calling P on a known number (not the number provided in the email setting out the new payment details) to check the payment details are correct. Had Wise have taken this step, the scam would have been uncovered and the loss prevented. Wise are the experts here and should have been alert to this type of scam.

I've gone on to consider whether Ms B and Ms A, on behalf of S, should share responsibility for the loss. I don't think it would be fair to hold S partly responsible in this case though. S received an email from a regular supplier it had built up a relationship with. The email was from the person at that business Ms B and Ms A usually dealt with and there was nothing unusual about the content of the email to alert them to the fact that something might be wrong. Importantly, the email also demonstrated an understanding of S's relationship and dealings with the genuine company. The fact P's bank details changed also wasn't unusual as this had happened before. And the fake email address was very similar to the genuine one. In the absence of any form of warning from Wise about email intercept scams I don't consider Ms B acted unreasonably in making the payment to the account the scammer provided details of.

Wise has suggested that S's bank should be approached. This service has considered a complaint about S's bank. I can't provide any details about that complaint here, but I can reassure Wise that S won't be reimbursed twice for the same loss. In any event, the transfer from S's bank to Wise was a me-to-me transfer so S's bank would have less reason to be concerned.

Given that I am upholding this complaint in full I don't need to consider whether Wise did enough to recover S's lost funds but for completeness I'll discuss this briefly. The scam was reported on 23 June 2022, but Wise didn't contact the bank that received S's funds until 29 June. I think Wise should have done so sooner but that the delay hasn't made a difference here. This is because the receiving bank never responded to Wise's request to return funds and likely wouldn't have done if Wise had got in touch as soon as the scam was reported. As the payment wasn't made to a non-UK bank there wasn't anything more that Wise could have done.

I'm satisfied that the £200 Wise has offered in respect of the service it provided is fair. If Wise hasn't made this payment already it should do so now.

Overall, I'm not persuaded Wise did enough to protect S's funds and believe that had it intervened appropriately S's loss could have been prevented.

My final decision

For the reasons stated, I require Wise Payments Limited to:

- Refund £83,007.87
- Pay interest on the above amount at the rate of 8% simple from the date of the transaction to the date of settlement (less tax if properly deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 9 October 2023.

Jay Hadfield
Ombudsman