

The complaint

Mr O complains that Wise Payments Limited ('Wise') won't refund the money he lost in a scam.

What happened

The facts of this case are well known to both parties, so I won't go into detail here. Mr O made a payment of £2,900 through Wise to what he thought was a well-known company. The payment represented rent for a month and a security deposit. Mr O received emails and other documentation but after he'd made the payment, he wasn't given any information about obtaining the keys and moving in and realised he was the victim of a scam. Later that day he contacted Wise to report what had happened.

Wise didn't refund any of Mr O's loss. It referred to Wise's terms and conditions which say a payment can't be reversed or recalled and that it is the sender's responsibility to check the legitimacy of the recipient of funds. Wise noted that it had tried to contact the firm that received Mr O's funds but hadn't received a response. As Wise issued its final response letter later than it should, it offered Mr O a fee free transfer.

Mr O was unhappy with Wise's response. He said Wise should have intervened when the payment was made and it hadn't done enough to try to recover his funds. Mr O had contacted the recipient firm himself and been told that Wise needed to send an indemnity, but Wise hadn't done so.

The investigator who considered this complaint said that Wise had no reason to have any concerns about the payment request Mr O made and so acted reasonably in processing it. But Wise didn't contact the firm that received Mr O's funds as promptly as it should have. Had Wise acted more quickly it could have secured the return of £4.49. So the investigator asked Wise to pay this (plus interest).

Wise agreed to pay Mr O £4.49. Mr O didn't agree with the investigator's recommendation. He said:

- The payment was significantly greater than previous payments and so Wise should have stopped it.
- Wise should have acted more promptly to recover his funds and didn't provide the requested indemnity to Wise.

The complaint has been passed to me to consider.

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.

I'm sorry to hear Mr O was the victim of a scam and of the impact the scam has had on him. I can understand why he wants to do all he can to recover the money he lost. But I can only direct Wise to refund Mr O's loss if it can fairly and reasonably be held responsible.

It is accepted that Mr O authorised the scam payments from his Wise account. So, although he didn't intend the money to go to the scammers, under the Payment Services Regulations

2017 and the terms and conditions of his account, Mr O is presumed liable for his loss in the first instance. And under the terms and conditions of the account, where a valid payment instruction has been received Wise's obligation is to follow the instructions that he provides.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank or money transfer platform like Wise to take additional steps or make additional checks before processing a payment in order to help protect its customer from the possibility of financial harm from fraud. An example of this would be if a payment instruction is sufficiently unusual or uncharacteristic for the usual use of the account. In such circumstances I'd expect Wise to intervene and ask more questions about the intended transaction before processing it.

I've considered Mr O's payment history for the 12-month period before the scam. Having done so, I'm not persuaded that the £2,900 payment request was so unusual or out of character that Wise ought reasonably to have intervened when it was made. Whilst I appreciate the loss has had a big impact on Mr O he was making a relatively small payment that was in line with his usual account and payment history. Shortly before the scam payment was made, Mr O made a transfer of £1,030.

There's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. If all payments such as the one Mr O made were stopped while further enquiries were made, many legitimate payments would be stopped which would cause significant disruption and delay.

For completeness, the Contingent Reimbursement Model Code doesn't apply in this case as Wise hasn't signed up to it.

Recovery

I would expect Wise to contact the bank or other business that received Mr O's funds promptly to try to recover them. Mr O reported the scam to Wise on 19 October 2022, but Wise didn't take this step until 1 November. So I've looked at what would have happened if Wise had taken appropriate steps soon after Mr O reported the scam. I've seen confidential evidence that the majority of Mr O's funds were used up very soon after they reached the account and before Mr O contacted Wise.

If Wise had acted more promptly it could have recovered £4.49. So I agree with the investigator that Wise should pay this amount to Mr O to put him in the position he would have been in if Wise had acted more promptly.

Overall, I'm sorry Mr O has lost money to a cruel scammer, but I can't reasonably hold Wise responsible for the majority of his loss.

My final decision

I require Wise Payments Limited to pay Mr O £4.49 plus interest on this amount at the rate of 8% simple per year from the date of loss to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 14 June 2023.

Jay Hadfield
Ombudsman