

The complaint

Miss S complains that Wise Payments Limited (Wise) is refusing to refund her the amount she lost as the result of a scam.

Miss S is being represented by a third party. To keep things simple, I will refer to Miss S throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Miss S found a website for a business called E-Trafiki (X). The website required Miss S to complete tasks to win prizes. Every time Miss S completed a task, she was required to pay more money to release the funds she had won.

This process went on for several payments and Miss S was communicating with X via WhatsApp. After a short time, Miss S thought the process didn't seem legitimate, X was asking for larger payments each time she completed a task. Miss S tried to make a withdrawal from her account, but X refused explaining Miss S would have to make further payments.

It was clear Miss S had fallen victim to a scam.

Miss S made the following payments as part of the scam:

| Date | Payee | Payment Method | Amount |
|-----------------|-----------------|----------------|--------|
| 3 November 2022 | Ng Yong Hong | Transfer | £35 |
| 4 November 2022 | Ng Yong Hong | Transfer | £64 |
| 4 November 2022 | Ng Yong Hong | Transfer | £106 |
| 7 November 2022 | Ng Yong Hong | Transfer | £20 |
| 7 November 2022 | Ng Yong Hong | Transfer | £66 |
| 7 November 2022 | Aini Binti Asma | Transfer | £245 |
| 7 November 2022 | Aini Binti Asma | Transfer | £815 |
| 7 November 2022 | Aini Binti Asma | Transfer | £2,300 |
| 7 November 2022 | Aini Binti Asma | Transfer | £1,994 |
| 7 November 2022 | Ng Yong Hong | Transfer | £2,114 |

Wise has offered to refund £581.31 to Miss S. It said that this amount remained in the receiving bank account and should have been credited to Miss S when she reported the scam but wasn't, so feels this was reasonable.

Our Investigator considered Miss S's complaint and thought it should be upheld in part. Wise disagreed, so this complaint has 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.

It has not been disputed that Miss S has fallen victim to a cruel scam. The evidence provided by both Miss S and Wise sets out what happened. What is in dispute is whether Wise should refund the money Miss S lost due to the scam.

Recovering the payments Miss S made

Miss S made the payments into the scam via the method of transfer. When payments are made via this method Wise has limited options available to it to seek recovery.

Wise checked the receiving banks to see if any funds remained when Miss S reported the scam. Wise has said that some funds did remain when Miss S reported the scam, but they were credited to a different customer. Wise has now offered to refund an amount equal to this to Miss S.

Other than attempting to recover the funds from the receiving accounts I don't think Wise had any other options available to it to recover the payments Miss S made.

Should Wise have reasonably prevented the payments Miss S made?

Banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Wise should have been aware of the scam and stepped into question Miss S about the payments she was making. And if it had questioned Miss S, would it have been able to prevent the scam taking place.

Wise is an electronic money institute (EMI) and not a bank so isn't subject to the same expectations set out in guidance and regulation as a bank when it comes to fraud prevention. Wise should execute payment instructions without undue delay. And as a starting point there is a presumption that liability for authorised payments is on the payer, even where it might've been made as part of a scam. But Wise might be liable for reasonably foreseeable losses if, in breach of its duty of care, it fails to act on information which ought reasonably to alert a prudent authorised payment institution to potential fraud or financial crime by, or against its customer.

I've thought carefully about Wise's obligations in this case, particularly given that Miss S was a new customer without previous account activity to compare her actions against.

The first seven payments made in relation to the scam were for low amounts that I would not have expected to have triggered Wise's fraud prevention systems. So, I don't think it was unreasonable that none of these payments were questioned by Wise.

The 8th payment made into the scam was for £2,300. This was the fifth payment Miss S had made in the same day for increasing values. As this pattern of payments is usual in scams of this type I think it's reasonable to say that Wise's fraud prevention systems should have been triggered and it should have stepped into question Miss S about the payments she was making.

I think Miss S would have been honest with Wise had it questioned her about the payments

she was making and as the scam she was experiencing was relatively common, I think it's most likely the scam would have been uncovered and any further loss avoided. So Wise is responsible for Miss S's loss from the payment of £2,300 onwards (the last three payments).

Did Miss S contribute to her loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

Miss S had no previous experience in this type of investment and was lulled into a false sense of security by a business that went to great lengths to appear to be legitimate. However, before Miss S made the last payment into the scam of £2,114, she questioned whether she was falling victim to a scam. I think it would have been reasonable for Miss S to research the company and type of investment further at this point.

So, I think it would be reasonable to reduce compensation by 50% for the last payment made into the scam on the basis that Miss S should share some blame for what happened.

Miss S has explained that she made a payment to a third-party business to help recover her funds. Unfortunately, I am unable to ask Wise to refund any amounts in relation to this.

Putting things right

To put things right I require Wise Payments Limited to:

- Refund the last three payments Miss S made in relation to the scam, (deducting 50% from the last payment of £2,114)
- Pay 8% simple interest to the amount it pays Miss S from the time she made the payment to the time it refunds her, less any lawfully deductible tax.
- Wise has made an offer of £581.31 (which includes 8% interest) as this is funds that were able to be recovered from the beneficiaries. If this amount was available prior to the 8th payment this should also be refunded back to her in addition to what I have said above.

My final decision

I uphold this complaint and require Wise Payments Limited to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 22 February 2024.

Terry Woodham
Ombudsman