

Complaint

Mr T is unhappy that Wise Payments Limited didn't do more to protect him from an investment scam.

Background

The background to this complaint is well known to both parties so I'll only summarise it briefly here.

In September 2022, Mr T fell victim to an investment scam. He received a direct marketing email inviting him to participate in an investment opportunity. He clicked a link in that email and filled out an online form with his details. Shortly afterwards, he was called by someone who claimed to work for an investment firm operating out of Switzerland. He was persuaded to invest but, from what Mr T has told us, he wasn't promised any specific return.

The scammer told Mr T that he would be set up with a £10,000 "liquid capital" facility. This would be in the form of a loan. He was reassured that the loan wouldn't be in his name and would be promptly cancelled. In practice, the scammers simply applied for finance with a third-party lender and had the proceeds paid into Mr T's current account. From there, his funds were transferred into an account with Wise and then onwards into the control of the fraudsters. That lender has since confirmed to the Investigator that Mr T has already paid off the £10,000 loan in full.

Once he realised he'd fallen victim to a scam, he notified Wise. It didn't agree to refund his losses. It said that *"the obligation of ensuring the legitimacy of the recipient on any given transaction lies with the sender of the payment. We always recommend all our customers to perform their own investigations on that person or business before setting up a payment."*

Mr T was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. Mr T accepted the Investigator's view, but Wise didn't. As a result, the complaint was passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting point in law is that Mr T will generally be considered liable for a transaction that he's authorised. It's common ground that these payments were authorised and so Mr T is presumed liable for them at first instance. However, good industry practice required that Wise be on the lookout for account activity that might have been indicative of a fraud risk. On identifying a payment that was out of character or unusual to the extent that it might have posed such a risk, it ought to intervene in a manner proportionate to that risk. That might involve pausing the payment and speaking to the customer first to satisfy itself that they're not at risk of financial harm due to fraud. However, where the risk is less clear-cut, a less interventionist response could be justified – for example, displaying a relevant warning

during the payment process.

In this case, Mr T made three payments – for £750, £7864 and £2136 respectively. The Investigator said that the second of those payments ought to have prompted action on Wise's part and I agree with that conclusion. I accept that this was a new account set up for the purpose of the scam. That put Wise in a rather more difficult position in terms of fraud prevention because it didn't have much historic data to serve as a basis of comparison when deciding if any individual payment made by Mr T was out of character. However, I think that payment was large enough that Wise shouldn't have simply processed it without taking some steps to protect Mr T from the risk of fraud.

As I've explained above, any intervention would need to be proportionate to the risk. I'm mindful of the balancing act Wise has between preventing fraud from taking place and allowing customers to continue to use their accounts without facing unnecessary friction and delay. However, given the facts of this case, I think Wise should at least have displayed a warning during the payment process.

There was considerable doubt in Mr T's mind at the point of that second transaction. If a robust and clear warning had been presented during the payment process I think, on the balance of probabilities, it would've persuaded Mr T to not go ahead with that payment or the one that followed.

However, I've also considered whether Mr T can be considered partially responsible for his own losses. In doing so, I've taken into account what the law says about contributory negligence but kept in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances.

I've seen the messages Mr T exchanged with the scammer. He was clearly concerned that he'd lost the money he'd invested up until that point. It's also apparent from the messages that he'd realised the explanation he'd been given by the scammers about the capital facility was false. He knew that a loan had been taken out in his name and that he would be liable to make repayments on it.

On balance, I think Mr T recognised the risk that he'd actually fallen victim to a scam but proceeded to make payments anyway. In the circumstances, I think he ought to have acted with far greater caution than he did and so I think it's fair and reasonable for him to bear responsibility for his own losses and for Wise to deduct 50% from the compensation it pays him.

Final decision

For the reasons I've explained above, I uphold this complaint in part.

If Mr T accepts my decision, Wise Payments Limited should:

- Pay him £5,000 (i.e. 50% of £7,864 and £2,136).
- Add 8% simple interest per annum to that sum calculated to run from the dates the payments left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 November 2023.

James Kimmitt

Ombudsman