

Complaint

Mr K is unhappy that Wise Payments Limited hasn't refunded the money he lost to a scam.

Background

Mr K was looking for work. He made contact with what appeared to be a recruitment agency online. Unfortunately, that contact turned out to be a fraudster rather than a legitimate employment agency.

He was offered a job as an affiliate marketer. He was told that he would need to buy "packages" through the employer's online platform and write reviews of products at various online platforms. He would be paid based on the number reviews that he'd written – but he couldn't earn anything unless he purchased sufficient packages. Essentially, the arrangement meant that he would lose money upfront but with the promise of generous reimbursement further down the line.

He made his first payment on 2 March 2022 for £5,000. He made another payment the following day for £3,850. When he didn't receive any pay from the employer, he realised he must have fallen victim to a scam.

He contacted Wise but it said it wouldn't reimburse him. In its response to his complaint, it wrote:

... the obligation of ensuring the legitimacy of the recipient on any given transaction lies with the sender of the payment. As Wise is a Money Remittance service, we do not have the ability to be involved in disputes between senders and recipients. Consequently, we always recommend all our customers to perform their own investigations on that person or business before setting up a payment.

Mr K was unhappy with that response and so he referred a complaint to this service. It was initially upheld by the Investigator. However, following arguments made by Wise in response to that uphold opinion, a second informal opinion was issued rejecting the complaint. Mr K disagreed with the Investigator's second view and so the case was passed to me to consider.

Findings

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

I issued a provisional decision on this complaint on 27 June 2023. I wrote:

It is common ground that Mr K authorised the payment. Under the Payment Services Regulations 2017, he is presumed liable for the loss at first instance. However, this is not the end of the story. Wise is an electronic money issuer. The regulator, the Financial Conduct Authority (FCA), has confirmed that all e-money issuers "must comply with legal requirements to deter and detect financial crime, which includes

money laundering and terrorist financing.” The nature and extent of those obligations have been set out in many final decisions issued by other ombudsmen at this service.

Broadly summarised, the obligations on Wise at the material time were to:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I've considered Wise's obligations carefully and I'm persuaded that it ought to have spotted the fraud risk here. The first payment Mr K made in connection with the scam was for £5,000 and to a new payee. I think there were enough factors in play here that Wise shouldn't have processed the first payment without first contacting Mr K to satisfy itself that he wasn't at risk of financial harm due to fraud.

If it had done so, I think it's likely it would've prevented his losses. There's nothing to suggest he wouldn't have been candid with Wise about the purpose of the transfers. And the arrangement Mr K had come to with what he believed was his employer was consistent with a common scam type and was sufficiently unusual that it ought to have elicited suspicion.

Wise has argued that, since it is an electronic money issuer rather than a bank, it necessarily views fraud risk differently. Its thresholds for marking an individual payment as suspicious are not the same. I'm not persuaded that this approach is justifiable. I'm mindful that Wise might face different challenges in respect of fraud prevention than a bank. A customer might not use an account with an EMI in the same way as they would use a current account at a bank. That means that the EMI might not have the same quantity of data to help them determine whether a payment is out of character or not, particularly if the account had only been open a short period of time.

But I don't think any of this posed a problem here. Mr K's account wasn't brand new and had several months of activity on it. There was enough data to enable Wise to have treated the first payment as being not in keeping with the typical payments on the account.

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

I do find it unusual that Mr K didn't act more cautiously here. While I understand he was out of work at the time and keen to find a new job, I'm surprised that he didn't

find the proposal unusual – i.e. that he was being asked to pay nearly £9,000 to allow him to carry out a new job. I think he ought really to have carried out some more research on the proposal and it's likely he'd have discovered that it was unlikely to be a legitimate operation.

For that reason, I think it's fair and reasonable for a deduction of 50% to be made from any compensation paid.

I explained that I would likely ask Wise to refund 50% of the money Mr K lost as part of the scam. Mr K accepted my provisional decision. Wise disagreed. It explained that Mr K had authorised a payment of £3,835 shortly before making the £5,000 payment. In view of that, it didn't consider that the £5,000 would've appeared unusual or out of character. It also pointed out that Mr K had sent money to seven different recipients since opening up his account and so the fact that he was adding a new payee wasn't indicative of a fraud risk either.

I've considered this response carefully, but I'm not persuaded to depart from the conclusions I set out in my provisional decision. I accept that Mr K did make a significant payment two days prior to the scam payment. But I don't think that's sufficient to say that there was an established pattern of similar payments that the £5,000 payment was consistent with. I don't think the £5,000 payment can be considered typical merely because there was a single instance of another payment of a similar (albeit lower) amount just before it.

Overall, for the reasons I set out in my provisional decision, I find that Wise ought to have intervened when Mr K asked it to make that payment and, if it had done so, I think it's more likely than not that the scam would've been prevented. Nonetheless, I'm persuaded that it's fair and reasonable for it to consider Mr K partially responsible for his own losses and deduct 50% from the compensation it now needs to pay him.

Final decision

For the reasons I've set out above, I uphold this complaint.

If Mr K accepts my decision, Wise Payments Limited needs to refund 50% of the money he lost to the scam. It also needs to add 8% simple interest per annum to this sum calculated to run between the date Mr K made the payments and the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 7 September 2023.

James Kimmitt
Ombudsman