

The complaint

Mr L complains that Wise Payments Limited (“Wise”) won’t refund payments that he says he didn’t authorise.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mr L says that a number of unauthorised transactions were made from his Wise account after his mobile phone was stolen at a nightclub on 28 August 2022:

Date	Merchant	Payment method	Amount
29/08/2022	Apple	Debit card	£2,098
29/08/2022	Apple	Debit card	£900
29/08/2022	Apple	Debit card	£327
29/08/2022	Apple	Debit card	£1,372.95
29/08/2022	Choice Stratford	Debit card	£1,135
		Total	£5,832.95

Mr L disputed the transactions with Wise when he became aware of them and said that whoever had stolen his phone must have accessed his account, where he had his passwords saved on his phone. Wise refused to refund the payments, however, as it said there was no evidence to suggest they had been made by a third party.

Our investigator upheld the complaint. She didn’t think Wise had provided enough evidence to show that Mr L had made or consented to the transactions, so she said it should refund the payments. Wise disagreed, so the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator and have decided to uphold it. I’ll explain why.

The disputed transactions complained about took place in August 2022, so of particular relevance to my decision are the Payment Services Regulations 2017 (PSRs) – which apply to transactions like the one made from Mr L’s account.

The PSRs say that a payment transaction is authorised by the payer where they have given their consent to the execution to the payment transaction. Such consent must be given in the form and in accordance with the procedure agreed between the payer and the payment service provider.

Unless the payment service provider can show consent has been given, it has no authority to make a payment or debit the customer's account. Where a payment service user denies having authorised a payment transaction, it is for the payment service provider to prove that the transactions in question were authorised by the customer.

Having considered the facts before me, I'm not persuaded there's enough evidence to demonstrate that it was Mr L who authorised the disputed transactions, and I'm satisfied there is a plausible explanation for how they came to be made by an unauthorised third party.

Mr L has shown that he has reported his phone as stolen on 28 August 2022 both to the police and his mobile phone provider, so I'm satisfied it was likely stolen from him. Mr L thinks that whoever stole his phone was able to access his device with his passcode, which he thinks the thief may have seen him type into his phone while he still had it, which would explain how they were able to gain access to his device. Mr L says he kept his passwords stored in the notes section of his phone, which would also explain how the thief would have been able to login to his Wise account. And given the thief was in possession of Mr L's mobile phone, it meant they were able to register his card with Apple pay and intercept any one-time passcodes required.

Wise initially said that a selfie was provided of Mr L holding his ID at the time the payments were made, so it considers that it was him who authorised them. However, Mr L has said that he was asked to provide a selfie when he contacted Wise to change the number on his account after he had discovered the transactions on 29 August 2022. And Wise hasn't been able to confirm the date or source of the picture it has and has accepted it's possible that the photo was provided by Mr L on 29 August 2022. As Wise has not been able to provide evidence to show when the picture was provided, I don't consider there's enough to conclude, on balance, that it was provided at the time the payments were made.

Wise also says that, to the best of its knowledge, a biometric authentication was passed in order to view Mr L's account information from inside the Wise app using an IOS device at 02:33 on 29 August 2023 – which was after Mr L said his phone had been stolen. However, Wise didn't respond to requests for further evidence made by this service asking it to show which device the biometric authentication was made from, and whether it was a recognised device that Mr L had used before (i.e. the phone that was stolen). I note that different IP addresses are shown accessing the account after it was reported stolen, for example. And given Wise hasn't responded to my requests for further evidence and clarification on this point, I don't consider there's enough to show that Mr L still had access to his phone and passed biometric authentication on his device after he said it was stolen.

As I've outlined above, it is for the payment service provider to provide evidence proving how a transaction was authorised. In this instance, I'm not persuaded Wise has been able to demonstrate that it was more likely than not to have been Mr L who authorised the payments. Mr L has also provided a consistent and plausible explanation for how the payments were made without him being involved.

The payment services directive itself (which the PSRs 2017 implement) states that *"in the absence of...consent, a payment transaction shall be considered to be unauthorised"*. For the reasons I've given above, I don't consider that Mr L provided his consent for these payments to be made from his account, I'm satisfied they are therefore to be considered as

‘unauthorised’ for the purposes of the PSRs 2017. This means that Wise is liable to refund the payments, unless it can show that Mr L acted with intent or gross negligence with regards to keeping his security credentials safe.

Did Mr L act with intent or gross negligence – particularly taking into account the terms and conditions of his relationship with Wise and the obligations set out in the PSRs 2017?

I don’t think Wise has suggested that Mr L failed to comply with his obligations under Regulation 72 of the PSRs with *intent*, and neither have I seen any evidence that would suggest this either. So, I do not intend to explore this point any further.

However, I have considered whether the actions Mr L took fell so far below the standard of a reasonable person that he could be said to have failed with gross negligence to take all reasonable steps to keep his security information safe or to comply with the terms and conditions of his account.

Gross negligence is not an abstract concept. It’s important to take into account all the circumstances when considering whether an individual’s actions amount to gross negligence. In this instance, I appreciate that Mr L had stored his security credentials on his device, which customers are advised not to do by their banks. However, while this may have been careless, I don’t consider it to have been *grossly negligent*. Mr L has confirmed that there was nothing linking the passwords saved on his phone specifically to his Wise account or online banking. And it would typically only be able to be accessed by him because his device was protected by an access code and facial recognition. So, I’m not persuaded his actions amount to a significant degree of carelessness in these circumstances so as to amount to gross negligence. I’m therefore satisfied that Wise should refund the disputed transactions.

I note that Wise has also raised concerns about the £6,000 that was used to fund the unauthorised purchases, which was transferred in from Mr L’s account with another bank (“S”). Wise has suggested that liability should be divided between it and S. First, I can see that Mr L did dispute the £6,000 transfer with S, and it declined his claim and has not refunded this amount, so there’s no risk of Mr L being compensated twice. Secondly, Mr L has not brought a complaint about S to this service. It is not party to this complaint, so I cannot make any finding about its potential liability and whether this should be shared with Wise.

Whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against two financial businesses about connected circumstances, Mr L has not referred a complaint about his other bank, and DISP does not empower me to instruct Mr L to make or refer a complaint to me about another business.

I am required to consider the complaint in front of me. I have found that Wise has not acted fairly and reasonably in the circumstances of this case. And whilst it is a possibility that Mr L may have cause to complain against S, I am not persuaded it would be fair to reduce the award solely for that reason. Mr L is entitled to choose to complain only about Wise, and I am satisfied that it ought to have refunded the unauthorised transactions.

My final decision

For the reasons given above, I uphold this complaint and direct Wise Payments Limited to:

- Refund the disputed transactions listed in the payment table above, totalling £5,832.95.

- Pay 8% simple interest per annum on this amount from the date of loss until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 December 2023.

Jack Ferris
Ombudsman