

The complaint

Mr W complains that Wise Payments Limited didn't do enough to protect him from the financial harm caused by a scam, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In August 2022, Mr W received a genuine letter from HMRC which stated that if he didn't pay the tax he owed, he would be summoned to court. Around the same time, he received a call from someone I'll refer to as "the scammer". The scammer claimed to work for the Ministry of Justice ("MoJ") and said that Mr W would be subject to a criminal investigation if he didn't pay the tax. Mr W questioned the authenticity of the caller and was told to check the number on the MoJ website, which matched the number the scammer was calling from.

The scammer asked Mr W to communicate with him via WhatsApp and to open an account with Wise to make the tax payment. Mr W thought it was MoJ protocol to take payments from Wise, so he opened a Wise account and transferred money into it from another of his bank accounts. From there, he made payments for £1,613, £981, and £500 to account details provided by the scammer without any intervention from Wise. There was also a fourth payment but this was cancelled.

When Mr W began to suspect he'd been scammed, he contacted MoJ and it confirmed it would never ask someone to transfer money. He then contacted Wise, but it refused to refund any of the money. It said that once a transfer is sent, the funds are no longer under its control and the obligation of ensuring the legitimacy of the recipient on any given transaction lies with the sender of the payment. It said that once it was made aware of the recipient bank account possibly being used for scam purposes, it took appropriate action to prevent further transfers and it had attempted a recall to the beneficiary bank, but the recall had failed.

Mr W wasn't satisfied and so he complained to this service. He said he wanted Wise to either reverse the transactions or refund the amount in compensation. He said it took a long time to investigate his claim which meant he lost the opportunity to trace the scammer and get his money back. He also said the account he paid didn't match the payee details, and Wise should have realised the payments were high-risk.

Wise said there was no previous transaction history to compare the payments to, so it couldn't reasonably determine that they were uncharacteristic or suspicious in nature and Mr W was using the account the way it expects its customers to use it i.e. sending GBP to recipient bank accounts. It said it had no suspicions regarding the recipient account details and the payment reference didn't indicate what the transfer was for or raise any red flags. It also said its fraud and scam prevention tools were working as intended, and it didn't feel there was anything it could have done differently to prevent Mr W's loss.

It said Mr W wasn't asked for a purpose when he opened the account. There were no warning messages displayed when he made the payments, but he was shown a confirmation of payee warning because the payee details didn't match and he confirmed he accepted the risk. It noted it didn't block the fourth payment, it was cancelled by Mr W.

Our investigator recommended the complaint should be upheld. He noted the account was newly opened and even though the payments were to a new payee, they weren't high value so he didn't think Wise needed to intervene.

However, our investigator also noted that Mr W complained to Wise on 31 August 2022, but it didn't send a recovery email until 7 September 2022, by which time the funds had been removed from the recipient account. He explained that Wise has an internal service level agreement of two days to send recovery requests, so a recovery email should have been sent by 2 September 2022. Because of this, he recommended it should refund the money Mr W had lost. But he explained that if Wise was able to provide evidence from the beneficiary bank that Mr W's money had been removed before 2 September 2022, he would reassess his opinion.

Finally, our investigator noted Mr W did owe tax, so he had a reasonable basis to believe the fraudulent call was genuine. He did question the authenticity of the call, but he was reassured because he checked the number on the MoJ website. And he wasn't too concerned that the payee's name didn't match the account details because he'd previously made payments without a match.

Finally, our investigator said Wise should have told Mr W on 12 September 2022 that the recovery had been unsuccessful, so it should pay him £50 compensation for its failure to do so.

Wise hasn't responded to the view, so the complaint has been passed to me to review.

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've reached the same conclusion as our investigator. And for largely the same reasons.

I'm satisfied Mr W 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, he is presumed liable for the loss in the first instance.

It's not in dispute that this was a scam, but although Mr W didn't intend his money to go to scammers, he did authorise the disputed payments. Wise is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether Wise could have done more to prevent the scam from occurring altogether. Wise is an EMI and at the time these events took place it wasn't subject to all of the same rules, regulations and best practice that applied to banks and building societies.

But it was subject to the FCA's Principles for Businesses and BCOBS 2 and owed a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible.

As this was a new account, there was no transaction history to compare the payments with, but I've considered whether the payments should have triggered an intervention from Wise and I don't think they should. Mr W was warned that the payee details didn't match and he confirmed he was happy to go ahead. And none of the payments were for particularly large amounts, so I don't think they were suspicious.

Recovery

Mr W reported the scam to Wise on 31 August 2022 and it sent a recovery email to the recipient bank on 7 September 2022, but no funds remained. Wise's internal service level agreement requires it to send recovery requests within two days and as it failed to do this, I'm satisfied it should refund the money Mr W lost to the scam. Our investigator said that he would review this if Wise could show evidence that the funds were no longer in the recipient account on 2 September 2022, but it hasn't produced this evidence.

Contributory negligence

I've considered whether the settlement should be reduced for contributory negligence, but I don't think it should. Mr W has explained that he did have an outstanding tax bill, so I don't think it was unreasonable for him to have fallen for the scam. And he didn't question why he was being asked to make payments to MoJ because he's not from the UK. He has also explained that the number the scammer called him from matched the number on the MoJ website, so he was satisfied the call was genuine. And he went ahead with the payment even though the payee details didn't match because he'd received that message before without a problem.

Having considered the circumstances of this scam, I don't think it was unreasonable for Mr W to have thought it was genuine. So, while there may be cases where a reduction for contributory negligence is appropriate, I don't think this is one of them.

Compensation

Our investigator has recommended that Wise should pay Mr W £50 for failures in its communication and I'm satisfied that's fair and reasonable.

My final decision

My final decision is that Wise Payments Limited should:

- Refund £3,099.80 to Mr W
- Pay 8% simple interest from the date of the payments to the settlement date
- Pay Mr W £50 compensation for its handling of the claim.

*If Wise deducts tax in relation to the interest element of this award it should provide Mr W with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 January 2024.

Carolyn Bonnell

Ombudsman