

The complaint

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

What happened

In August 2022, Mr L came into contact with someone I'll refer to as "the scammer" who introduced him to a company I'll refer to as "G". The scammer advised Mr L he could make money by trading in forex and gave him access to a trading account on G's platform where he would be able to see his trades.

Between 8 September 2022 and 1 November 2022, Mr L made five transfers to account details provided by the scammer totalling £61,852.70 from his Wise account. The first three payments were for trades and two of them were to pay what he understood to be the tax required to release his funds from G, which was based overseas.

In addition to the five payments, Mr L also made two further payments to the scam on 15 February 2023 and 17 March 2023 for \$3,000.39 and \$10,975.39. I've previously issued a decision explaining that as these two payments were made from an account under Wise's European entity, the complaint about them isn't within our jurisdiction therefore I can't consider Mr L's complaint about them.

Mr L realised he'd been the victim of a scam when he was unable to release any of his profits or investment. He reported the matter to Wise, but it declined the claim. It said it had attempted to recall the funds from the recipient accounts, but the recall had been unsuccessful.

It said the obligation of ensuring the legitimacy of the recipient lies with the sender of the payment, it doesn't have the ability to be involved in disputes between senders and recipients and it can't be held liable when a loss occurs as a result of fraudulent behaviour on behalf of the recipient after a payment has been made to them.

Mr L wasn't satisfied and so he complained to this service and our investigator felt the complaint should be upheld.

Responding to the view, Wise argued that because it's not Mr L's primary bank it didn't have access to his income or savings information, so it's unrealistic to expect it to detect if the transactions were abnormal. However, based on the value of the payment and the fact it was the third payment to the same payee and the second in 24 hours, it accepted it should have intervened and provided a tailored warning when Mr L made the third payment. But it argued that Mr L had expected to receive a return of \$120,000 from an investment of \$5,000 which was unrealistic and that further due diligence would have uncovered the scam. So, it offered to refund the final two payments, with a reduction of 50% for contributory negligence.

My provisional findings

I was satisfied Mr L 'authorised' the payments for the purposes of the 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, Mr L is presumed liable for the loss in the first instance.

I explained there's no dispute that this was a scam, but although Mr L 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

Wise was an emoney/money remittance provider 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 BCBS 2 and owed a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible.

I thought about whether Wise could have done more to prevent the scam from occurring altogether. Wise ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have intervened to warn Mr L when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Wise to intervene with a view to protecting Mr L from financial harm due to fraud.

Since our investigator issued his view, Wise had offered to refund 50% of the final two payments, so I considered whether that offer was fair. In doing so, I considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr L normally ran his account and I thought they were. The first payment on 8 September 2022 was for £5,000 and it was to a new payee. There would have been no signs that the payment was linked to an investment, but there were no payments of similar value in the months prior to the payment and the previous payments were to an account in Mr L's own name. So, I thought the first payment was unusual for the account and that Wise missed an opportunity to intervene.

I thought Wise ought to have contacted Mr L either by phone or via its live chat facility and that it should have asked him some questions about the payment. As there's no evidence he'd been coached to lie, I thought he'd have explained that he planned to invest in forex. And had he done so I said I expected the call handler to have asked some probing questions about the circumstances of the investment including whether G was authorised by the FCA. It could also have provided a tailored scam warning about the risks associated with the investment, specifically that if G wasn't authorised by the FCA, this would suggest it was operating illegally. It could also have discussed with him the nature of the checks he'd undertaken and given some advice on additional due diligence.

As there's no evidence Mr L was keen to take risks, I thought it was likely he'd have listened to some robust advice and done some additional due diligence and, ultimately, decided not to go ahead with the payment. Consequently, I thought Wise's failure to intervene represented a missed opportunity to have prevented his loss and so I said I was minded to uphold the complaint and direct Wise to refund the money Mr L had lost from the first payment onwards.

Contributory negligence

I considered whether the settlement should be reduced for contributory negligence, but I didn't think it should. Having considered the circumstances of this scam, I was satisfied it was sophisticated and I didn't think it was unreasonable for Mr L to have thought it was genuine.

I'd seen no evidence that Mr L was an experienced investor and so I wouldn't expect him to have known how to check G was authorised by the FCA website without having been advised to do so by Wise. Consequently, I didn't think he contributed to his own loss in failing to do so.

In offering to pay 50% of the final two payments, Wise had argued that Mr L was promised unrealistic returns and that this should have prompted him to do further due diligence. While I accepted that very high returns are often be a red flag for fraud, I accepted Mr L was inexperienced and so I couldn't fairly conclude that he should have known the returns were unrealistic. And I hadn't seen any evidence that he ignored any warnings or other facts which ought reasonably to have alerted him that was being scammed and I didn't think he needed to do any more due diligence in circumstances where he believed the investment was genuine at the outset.

So, while I agreed there are circumstances where a reduction for contributory negligence might be appropriate, I didn't think this was one of them.

Compensation

I said Mr L isn't entitled to any compensation.

Recovery

I didn't think there was a realistic prospect of a successful recovery because Mr L paid an international account and the funds were moved onwards from there.

Developments

Neither party has submitted any additional evidence or arguments for me to consider.

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.

Because neither party has submitted any additional evidence or arguments for me to consider, the findings in my final decision will be the same as the findings in my provisional decision.

My final decision

My final decision is that Wise Payments Limited should:

- refund the money Mr L lost from the first payment onwards
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 2 July 2024.

Carolyn Bonnell
Ombudsman