

The complaint

Ms T complains that Wise Payments Limited didn't do enough to protect her from the financial harm caused by an investment scam, or to help her recover the money once she'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.

On 4 November 2021 Ms T received a telephone call from someone I'll refer to as the scammer who claimed to be calling from her national embassy. The scammer said she'd been in close contact with someone who had tested positive for COVID-19 when she was in hospital on 21 October 2021.

Suspecting this might be a scam, Ms T said she hadn't been in the country since 2018. But the scammer had her personal details including her full name, home address and date of birth. They said her identity might have been compromised so she should report it to the police.

The call was then connected to someone who claimed to be a police officer who said according to her ID card number, Ms T was involved in a highly classified, very serious international money laundering case and she would be deported within a month if there was no new evidence in her favour. They also said she shouldn't tell anybody, including her own family.

The scammer kept in touch with Ms T through WhatsApp and added her to a group chat with two others also claiming to be police officers. They said she could be in custody for more than three months, but she could send some funds to be used for her release on bail pending the trial.

The scammer instructed her to open an account with Wise and to pay money into that account from her other account. She opened the Wise account on 26 November 2021 and between 26 November 2021 and 15 December 2021, she made eight transfers to W from her other account totalling £134,000. From there, she transferred the funds to the scam on the understanding they would be returned to her as a lump sum payment by the end of the month.

But on 22 December 2021 the scammer told Ms T she would need to clear all the chat histories and exit the WhatsApp groups as the case was highly classified. She realised she'd been scammed when she heard nothing further.

Wise refused to refund any of the money she'd lost so Ms T complained to this service with the assistance of a representative. The representative explained she'd opened the account on 26 Nov 2021 and immediately started depositing funds into the account, so it should have either frozen the account or called her to question her about the payments. Wise said it didn't have a record of having intervened, but it said it's not unusual for new customers join

Wise and use the service the way it's meant to be used - i.e. sending money to overseas accounts. And as Ms T was a new user with no transaction history, it couldn't reasonably determine that the transfers were uncharacteristic, so the loss wasn't foreseeable. And since none of the recipient accounts had previous reports against them, and none of the transfers triggered a fraud review, it couldn't determine that the recipients would turn out to be fraudulent.

It said when Ms T reported the scam it took immediate action to block the recipient accounts and issued recalls on all of the transactions the next working day. It also argued the other bank should have questioned why Ms T was transferring such a large amount of money over such a short period and it was able to look back on her account history and recognize the frequency and volume of the transactions were alarming.

Our investigator didn't think the complaint should be upheld. She thought Wise should have intervened because of the value of the payments but she didn't think Ms T would have disclosed why she was making the payments because she was under the spell of the scammers and hadn't even told her husband and mother, from whom she'd borrowed money. So even if Wise had intervened, she didn't think it would have uncovered the scam. She noted Wise had attempted to recover the payments, but the recall wasn't successful. And she was satisfied that by the time she reported the scam, it was likely that no funds remained.

Ms T asked for the complaint to be reviewed by an Ombudsman.

My provisional findings

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

There's no dispute that this was a scam but although Ms T didn't intend her money to go to scammers, she 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 BCOBS 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 Ms T when she 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 Ms T from financial harm due to fraud.

The payments didn't flag as suspicious on Wise's systems and there were no other interventions or warnings. The first transfer occurred the day the account was opened and

so there was no previous spending to compare it with. But the first payment was £20,000 to an international account, so I think Wise should have intervened.

I thought it should have contacted Ms T and asked her why she was making the payment. It's evident she really believed what she'd been told by the scammers and that she'd been coached to lie, so I didn't think she'd have told the truth about the circumstances of the payment. However, Ms T had explained that the scammers had told her to tell the bank the payment was for a 'currency investment' and that if she'd been asked further questions about that she'd have found it difficult to answer.

I thought that if Wise had contacted Mr T and she was unable to give a convincing explanation for why she was making the payment, this would have been a red flag that she was at risk of fraud. And although it wouldn't have known for sure that she was being scammed or the precise nature of the scam, it could have provided some general scam advice, which would include asking whether she'd been contacted out of the blue for example by someone saying they were the police. It could also have asked whether she'd been told to lie to the bank and advised her to do some research before going ahead with the payments.

We can never know how Ms T would have reacted, but the circumstances would have fitted with a general scam warning and if Ms T was made to pause to think about the circumstances, I thought it was possible she'd have questioned what she was being asked to do by the scammers. Critically, a Google search would have shown the circumstances fitted with a common scam type and as it's clear Ms T's actions were driven by fear rather than a desire to make a profit, I had no reason to think she wouldn't have done some research if advised to do so by her bank. And had she done so, I thought it was likely she'd have realised she was being scammed.

I accepted Wise wouldn't have had enough information to say for sure that Ms T was being scammed, but it just needed to say enough to encourage her think about what she was doing and had it do so I thought, on balance, the scam would have been prevented. Because of this, I was minded to direct Wise to refund the money Ms T 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. Ms T had explained that the scammers were very convincing and that her actions were driven by fear of what might happen if she failed to carry out their instructions.

Having considered the circumstances of this scam, I was satisfied it was sophisticated and I didn't think it was unreasonable for Ms T to have thought it was genuine.

I'd seen no evidence that Ms T ignored any red flags or warnings and consequently, I didn't think she contributed to her own loss. So, whilst there may be cases where a reduction for contributory negligence is appropriate, I didn't think this is one of them.

The settlement

As the parties are aware, Ms T has also complained about the actions of her other bank. Our service's ability to investigate complaints together and apportion the burden of redress between respondents is the subject of no specific rule and only limited guidance, which can be found in the FCA's Handbook at DISP 3.5.3G and DISP 3.6.3G, which say:

DISP 3.5.3G: “Where two or more complaints from one complainant relate to connected circumstances, the Ombudsman may investigate them together, but will issue separate provisional assessments and determinations in respect of each respondent.”

DISP 3.6.3G: “Where a complainant makes complaints about more than one respondent in respect of connected circumstances, the Ombudsman may determine that the respondents must contribute towards the overall award in the proportion that the Ombudsman considers appropriate.”

I explained in my provisional decisions that I’d found there were failings not only by Wise, but also her other bank in what reasonably could’ve been expected of them. And with respect of these payments, which both parties were involved with, I thought it was fair to ask each of them to pay half the loss which could’ve prevented.

Compensation

I said Ms T isn’t entitled to any compensation.

Recovery

I didn’t think there was a realistic prospect of a successful recovery because the payments were to international accounts.

Developments

Ms T has indicated she agrees with my provisional findings, and Wise hasn’t responded.

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 disagreed with my provisional findings, 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 50% of the money Ms T 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 Ms T with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms T to accept or reject my decision before 2 July 2024.

Carolyn Bonnell
Ombudsman