

The complaint

Mr D says Wise Payments Limited (“Wise”), didn’t do enough to help when he fell victim to an ‘authorised push payment’ (“APP”) impersonation scam. He says Wise should reimburse him for the money he lost.

What happened

As both parties are familiar with the circumstances of this complaint, I’ve summarised them briefly below.

In summary, Mr D fell victim to an impersonation scam. Mr D was contacted by someone purporting to be from the Financial Conduct Authority (FCA). Mr D was duped into believing that there was around £12,500 in cryptocurrency that was due to be returned to him. Mr D believing he was liaising with the FCA, and having purchased cryptocurrency previously, carried out the instructions that he was advised to do. This led to Mr D, with the assistance of the scammer, setting up an account with Wise. Mr D’s account with Wise was credited with two payments of £1,000 from his current account held with another banking provider. Then a £2,000 payment was made to a beneficiary that Mr D believed was a senior account manager at the FCA. And the payment was for fees to convert and send Mr D the cryptocurrency he believed he was owed.

Mr D quickly realised it was a scam and reported the matter to both Wise and his own bank to see if he could recover the funds. Mr D also reported the matter to the police.

Wise ultimately didn’t consider it was liable for the losses Mr D incurred.

Unhappy, Mr D brought his complaint to our service. Our Investigator reviewed the matter and didn’t recommend the complaint be upheld.

Our Investigator didn’t think Wise ought to have done more to identify the payment as potentially fraudulent in the circumstances. They didn’t consider Wise ought to have had a cause for concern that Mr D was potentially at risk of financial harm, or that he was falling victim to a scam to an extent that it ought to have intervened and questioned him further about the payment he made.

With regards to the recovery of any funds from the beneficiary account, as Wise hadn’t provided its submissions, our Investigator made an on balance finding that it was likely that the funds weren’t recoverable.

Mr D disagreed with the Investigator’s opinion and as the matter hasn’t been resolved, it’s been passed to me to decide.

Wise has since provided its submissions on Mr D’s complaint. It remained of the opinion that it wasn’t liable for Mr D’s losses, and it also provided evidence to show that the funds had already been moved on from the beneficiary account prior to Mr D notifying it of the scam. So it considered it wasn’t able to help Mr D further as it was unable to recover any funds.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'm aware that I've summarised this complaint and the responses briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here – which is to determine whether Wise should have done more to prevent Mr D's losses. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Having thought carefully about Wise's actions, I'm not upholding Mr D's complaint. I do appreciate how disappointing this will be for him. Mr D was the victim of a cruel scam. But in weighing everything up, I don't consider there were any failings by Wise, so it isn't liable to reimburse him either partially or in full. I'll explain why.

First, I would like to take the opportunity to explain to Mr D why the Contingent Reimbursement Model (CRM Code) isn't an applicable consideration in this case.

The CRM Code is a *voluntary* code that some banking providers and respondent firms signed up to. The principle of the CRM Code is that it is designed to offer increased protection and reimburse consumers who have fallen victim to a scam. However Wise are not a signatory of the CRM Code and therefore the provisions of the CRM Code don't apply in this case.

The relevant law and regulations in place at the time

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account.

Here, Mr D authorised the payment from his Wise account to a new payee. I accept Mr D was assisted in the process of setting up the Wise account by the scammers and they assisted in the facilitation of the payment made to the beneficiary. But Mr D was aware that the payment was being made as he thought the purpose of the payment was for 'fees' to release his cryptocurrency and believed that the beneficiary the payment was going to, was a senior account manager at the FCA.

So it is the case that Mr D authorised the payment that is in dispute. And under the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr D is responsible for it. That remains the case even though Mr D was the unfortunate victim of a scam and duped into making the payment.

However there are times when I might expect a bank or Electronic Money Institute ('EMI'), such as Wise, to question a transaction or payment, even though it may have been properly authorised. Broadly speaking, firms like Wise have certain obligations to protect customers from fraud.

What does this mean for Mr D?

In this case, I need to decide whether Wise acted fairly and reasonably in its dealings with Mr D when he made the payment, or whether it should have done more than it did.

I've thought about this carefully. Having done so, I can't fairly say the payment Mr D made would (or should) have alerted Wise that Mr D was potentially at risk of financial harm, to an extent whereby it should have carried out some additional checks before processing the payment. So I don't consider Wise are liable for the losses Mr D incurred. I'll explain why.

I have to be mindful that banks and payment service providers and EMI's (such as Wise) process a high volume of transfers and transactions each day. And Firms have to strike a balance as to when it should possibly intervene on a payment against not holding up or delaying its customer's requests.

Here, I don't consider there is anything unusual or remarkable about the payment or the amount that ought to have alerted Wise to the possibility Mr D was being scammed or was at risk of financial harm. And I'm also mindful that Wise didn't have a historic relationship with Mr D as the account had only been opened shortly prior to the payment being made as a result of the scam. As there wasn't a historic relationship between the parties, Wise wouldn't reasonably have been able to determine whether the payment Mr D was making was unusual or out of character. And while I appreciate £2,000 was a lot of money to Mr D, given the purpose that consumers use Wise for and given the volume of payments Wise processes, the amount wasn't so significant nor the transaction so unusual that I would expect Wise to carry out some additional checks on it.

All things considered; I think it was reasonable that the payment didn't flag as suspicious – and I can't say Wise acted unfairly here.

Recovery of the funds

I have also considered whether Wise did all it could to try and recover the money Mr D lost. Wise, in its submissions, provided evidence to show that the funds had been moved on / utilised, on the same day that they had been received. So unfortunately, it was unable to recover anything when it was notified of the scam by Mr D the next day. Meaning there wasn't anything further it could do to help Mr D in this regard.

Summary

While I appreciate Mr D's been the unfortunate victim of a cruel scam, I think Wise's decision not to refund him in this instance was fair and reasonable in the circumstances. I say this because Wise followed Mr D's instructions to make the payment and I haven't seen any reason why it shouldn't have done this. Unfortunately, given the funds Mr D transferred were moved on/utilised straight away, there wasn't anything further Wise could do to help Mr D recover his funds as none remained at the receiving account.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 July 2024.

Matthew Horner
Ombudsman