

The complaint

Mr O is a sole trader, trading as E. He complains that without justification, ClearBank Limited have been holding on to funds that properly belong to him, and he'd like those funds returned.

Mr O's account (the Account) is operated through a platform provided by ClearBank's business partner under the brand name Tide. For easy reference, I'll refer to ClearBank throughout this decision. But, where relevant, this should be taken as meaning Tide.

What happened

The background to this case is familiar to the parties so, I won't repeat it in detail.

Briefly:

- Mr O opened the Account with ClearBank in March 2022.
- On 24 January 2023, ClearBank contacted Mr O to say that in light of two high value transactions that had been processed recently, they intended to conduct a review into the Account.
- As part of the review, ClearBank asked Mr O to provide the bank with information about his business and activities on the Account. More specifically, the bank wanted to see documentary evidence to support the two transactions which were card payments totalling £19,000. Mr O was asked to provide the information within three days and that delay might result in the suspension of the Account.
- Mr O promptly provided the information and documentation ClearBank had asked for.
- On 30 January 2023, after Mr O had been chasing ClearBank for updates, the bank contacted Mr O again. This time ClearBank asked for additional information and documentation regarding a number of payments that had been made from the Account between December 2022 and January 2023.
- But although by return Mr O provided the bank with some of the information it required, nonetheless he told the bank, that he didn't have any supporting documentation for some of the transactions which were personal in nature and of low value. ClearBank told him they would come back to him with an update as soon as possible. In the meantime, ClearBank suspended the Account.
- Mr O therefore, complained to ClearBank. Primarily, he was unhappy that he'd been unable to access the £19,000 that was paid to him, as well as the length of time the bank was taking to conduct its review.

- After completing their review, in March 2023, ClearBank closed the Account. Later, they returned to Mr O the credit balance in it. The £19,000 hadn't formed part of that balance and so only a nominal amount was returned to Mr O.
- ClearBank told Mr O that any payments to him that hadn't been credited to the Account, would be refunded to the cards of the payers. They said Mr O might wish to discuss this with his clients in order to arrange a different way to receive his funds.

ClearBank did also acknowledged providing poor service to Mr O. They said they should have told him they'd suspended the Account when they did. So, the bank offered Mr O £50 in compensation.

Beyond that, however, ClearBank didn't think they'd done anything wrong. They told Mr O, that as a financial services provider, they have certain regulatory obligations they're required to observe. To that end, they said they were entitled to review the Account because as in Mr O's case on occasions they have to verify information to make sure accounts are safe. And, as took place when they were reviewing the Account, establishing the nature and intended purpose of certain transactions are part of that process.

Mr O's complaint remained unresolved, however. In particular, because Mr O believed ClearBank were holding on to his funds. So, Mr O referred his complaint to this service.

Our investigator didn't uphold the complaint. He said - in summary:

- He wasn't able to conclude ClearBank made an error in the circumstances of this case. More particularly, because ClearBank had been carrying out their regulatory obligations, in the course of which it wasn't unreasonable for them not to allow any transactions into or from the Account. Furthermore, having regard to clause 10.3 of the Account's terms and conditions, ClearBank were allowed to suspend access to the Account.
- In respect of Mr O's core complaint, concerning his lack of access to the £19,000, he wasn't persuaded the funds were being held by ClearBank. He was satisfied by ClearBank's evidence that the money didn't actually reach their account – which meant that in turn they couldn't transfer the payment to the Account.
- He observed that using a payment link, Mr O's client sent the £19,000 payment via a third-party company, which I refer to as Y. And he was persuaded by ClearBank's evidence that on noting the high value nature of the payments, they wanted additional information from Mr O before accepting them for processing into the Account. This being the basis for the review.
- Ultimately the review led to ClearBank's decision to close the Account and he didn't think ClearBank's actions caused Mr O to lose £19,000. He believed the funds were being held by Y and Mr O's client ought to engage with Y to seek their return. In other words, the matter would need to be sorted out between Mr O's client and Y.

Mr O didn't accept the investigator's conclusions and has asked for an ombudsman to review his complaint. In summary, he said:

- He wasn't unhappy about ClearBank's review into the Account, because he had nothing to hide as demonstrated by his prompt response to the bank's request for

information. The payments that were being questioned were from a United Kingdom client and were carried out in the normal cause of business.

- The Account was suspended without notice after he'd supplied information in response to the bank's follow up request. But that request was for information on non-business transactions that took place on the Account. Therefore, the suspension was unfair because it had no relevance to the actual review of the circumstances of the £19,000 transaction.
- The bank had never denied receiving the £19,000. After all it was done on their platform and they confirmed it. All the transaction evidence has their name and logo plus they have always maintained the money is safe.
- Social media reviews about the bank's practise confirm this is not an uncommon behaviour on its part.

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.

Where the evidence is incomplete or inconclusive (as indeed some of it is here) I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Having considered this case, however, I've reached the same overall conclusion as the investigator – and for broadly the same reason. I'll explain why.

ClearBank's right to conduct their review

ClearBank have explained the basis for conducting the review that they did into the Account. I'm satisfied they were within their right to do so, not least for the reasons they've explained.

I would add also that the bank was entitled to ask for the information it considered appropriate for its review and to interrogate any transactions it believed to be necessary as part of that process.

In fairness Mr O has not challenged ClearBank's right to review the Account. And I acknowledge, as he's pointed out, that he cooperated with the bank in that regard.

Nonetheless, it is worth noting that the bank was carrying out its regulatory obligations, and in light of the consequences it would face for failing to do so, I'm satisfied ClearBank haven't done anything wrong in relation to the review.

That being said, I note nonetheless, that ClearBank suspended the Account whilst carrying out the review and that Mr O was unhappy about that. I can understand Mr O's reasons for being unhappy about certain aspects of the bank's behaviour. Especially, the absence of any notification of the suspension of the Account. Mr O has told us he only discovered what had happened when he'd tried unsuccessfully to make a payment for parking his car.

I've weighed up the terms and conditions of the Account against Mr O's argument that it was unfair in any case to suspend the Account. Clause 10.3 is relevant and says:

“10.3 If we need to suspend your access to payment services

We may suspend some or all of the services for your Tide Business Account (and notify Tide where applicable) if, for example:

a. Tide informs us you have not paid any monies owing to Tide on time;

b. we reasonably suspect fraud or unauthorised use;

c. we reasonably believe this is necessary to protect your account;

d. you've broken any part of these Bank Account Terms in a serious way;

or e. you're no longer able to access the Tide Portal because Tide has suspended or terminated your access in accordance with the Tide Terms.

Unless we're prevented by a legal, regulatory or security reason, Tide will normally tell you before or immediately after stopping or suspending payments and, where possible, explain why this has happened."

In light therefore of the above clause, I am unable to conclude ClearBank did anything wrong when they suspended the Account whilst carrying out their review. In particular, as was the position here, their review was triggered by concerns about the £19,000 payment and they wanted to look into things further.

That being said there seems no clear reason ClearBank couldn't have told Mr O about their proposed action. And I can understand Mr O's frustration to have found out what had happened in the way in which he did. In the circumstances the bank did as I would have expected which was to acknowledge its error and fairly compensate Mr O for it. I believe it did so by offering Mr O £50, albeit I acknowledge Mr O thinks the offer insults him.

And whilst the bank did take a further step by closing the Account following its review, the bank is entitled to exercise its commercial discretion to decide who it wishes to have as its customer. It is not my role as ombudsman to interfere with the legitimate exercise of that judgement.

Withholding the £19,000

This is at the heart of Mr O's complaint to which I now turn.

I take Mr O's point that the £19,000 was transacted on ClearBank's business partner's platform and that the bank has never disputed this. It is ClearBank's case, however, the funds did not reach them. They said they had concerns about the transactions and initiated their review in advance of acceptance to make sure they'd be comfortable accepting the payments.

I acknowledge Mr O's point that at no point in the course of the review ClearBank told him they hadn't received and weren't holding the funds. Although I have no reason to doubt this, I also don't have anything to indicate that Mr O was told the bank was in possession of the funds.

ClearBank have explained Mr O's clients made the payment through Y, a third-party payment processor, and that the funds have remained with them. I have no basis for doubting that evidence. It follows therefore that I cannot require the bank to return them.

I appreciate Mr O believes ClearBank has his funds. I thank him for sharing the copy e-mail his client sent to ClearBank saying the payments were processed by them and since they were not received by Mr O, ClearBank are responsible for refunding them. Important though that evidence is of Mr O's client's engagement in trying to recover the funds, it does not demonstrate ClearBank are holding them. Moreover, I've seen no correspondence of a similar nature between Mr O's clients and Y as I reasonably would have expected given the bank's assertion the funds are with them.

That being said, and regardless of what Mr O has unearthed on social media, the fundamental point is that I've seen no persuasive evidence to lead me to conclude ClearBank have held onto funds belonging to Mr O and that I should require the bank to return them.

For completeness I would add that neither have I found that ClearBank have done anything wrong that has resulted in Mr O's potential loss of those funds.

My final decision

My final decision is I do not uphold this complaint.

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

Asher Gordon
Ombudsman