

The complaint

C, a limited company, complains that ClearBank Limited won't refund the money it lost to a scam from its Tide-branded business bank account.

C's director, Mr L, brings the complaint on C's behalf.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

In September 2022 Mr L received a call from someone purporting to work for Tide. Unfortunately, he was really interacting with a fraudster. The fraudster convinced Mr L that C's Tide-branded business bank account was at risk and persuaded him to drain the account balance via two faster payments. The fraudster led Mr L to believe that the money was being sent to a new account held in his name. Mr L discovered he'd been scammed the following day when information about the new account did not arrive.

ClearBank tried to recover the money Mr L sent, but was ultimately unsuccessful. It declined Mr L's claim for a refund and maintained its position when he complained. In its final response letter it said Mr L had authorised the disputed payments and there was nothing more it could have done to have saved the funds. It explained it was not feasible to stop and check every single payment and it had adequate systems in place. As Mr L remained unhappy, he referred his complaint to us.

Our Investigator recommended the complaint be fully upheld. She noted the account hadn't been open long, but highlighted the two disputed payments were for much higher values than usual. She thought draining the account balance stood out and said ClearBank ought to have been concerned enough to intervene and warn Mr L this could be a scam. She thought ClearBank would have been able to uncover the scam with some simple questions about what the payments were for as Mr L had not been given a cover story. She noted the sophistication of the scam and felt that Mr L's actions were reasonable. She noted the difficult personal circumstances Mr L and his family were facing without this money, but pointed out she was unable to compensate the director of a limited company for his personal distress.

ClearBank offered a 50% refund in response to the Investigator's view. It said that business customers do make bigger payments from time to time and pointed out it is a difficult balance to strike between allowing genuine business activity and detecting potential irregularities.

It recognised that it could have done more to monitor these specific transactions given the concerning factors our Investigator had highlighted about the payments. But it felt Mr L should take some responsibility too. It pointed out that its technical records show he scanned the QR Code which gave the fraudster web access to C's Tide account 26 times. It highlighted the wording of the one-time passcode texts sent to Mr L's mobile number explaining Tide would never call and ask him to move funds. It felt Mr L had willingly sent his

funds to a different account when he should have been more suspicious about what was going on.

Mr L did not wish to accept the partial offer and our Investigator was not persuaded by ClearBank's points. She still thought it was reasonable for Mr L to do as he'd been asked given the pressure he was under and the coaching he received from the fraudster. She pointed out Mr L had scanned the QR Code so many times because it wasn't working, which did not concern him as he thought he was dealing with the genuine firm. ClearBank disagreed and asked for the matter to be considered by an Ombudsman, so the complaint has now been referred to me.

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, and despite what ClearBank has said and provided, I think ClearBank should refund all of the money C lost to the scam (along with interest to recognise that C has been deprived of that money).

There's no dispute that Mr L authorised both of the disputed payments on behalf of C. So, although he didn't intend the money to go to the scammer, under the Payment Services Regulations 2017, and the terms and conditions of the account, C is presumed liable for the loss in the first instance. But the matter doesn't end there.

I've noted ClearBank's comments about the level of responsibility and autonomy it expects of its exclusively business clients with regard to their ability to make informed decisions with their funds. But, importantly, ClearBank also agrees that it should be on the lookout for, and helping to prevent, payments that could involve fraud or be the result of a scam. I accept a balance must be struck between identifying payments that may indicate a customer is potentially at risk of financial harm – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments.

ClearBank has already acknowledged that its transaction monitoring system did not accurately recognise the risk in Mr L's transactions. It took account of our Investigator's comments that the situation bore the hallmarks of a scam. The transactions were significantly higher than any other payments C had made before. They rapidly depleted the available balance and the actual account name didn't match the account name that Mr L had entered. So I agree that ClearBank should have spotted these signs and contacted Mr L to ask some appropriate questions. Had it done so, I see no reason why it would not have been able to uncover the scam and prevent C's losses.

Whilst ClearBank agrees it should have done more, it also thinks Mr L should share some responsibility for the loss. I've thought about whether Mr L's actions or inactions fell below the standard expected of a reasonable person. Having done so, I'm not persuaded that he is partly to blame for falling for the fraudster's story. I can understand why he accepted what he was being told. I don't consider ClearBank has placed appropriate weight on the environment the fraudster was able to create.

A "spoofed" number is a very powerful confidence trick. In addition to this, the way in which the fraudster was able to integrate Tide's legitimate processes and procedures into the scam was masterful and totally disarmed Mr L. He's explained he was convinced he was speaking to the genuine firm, and I don't think he ought to have realised that he wasn't. ClearBank has highlighted the number of times that Mr L scanned the QR Code as a strong indicator that something was amiss. It's also pointed out the wording of the one-time passcode text

covered exactly the situation Mr L was in. But I don't think these things are enough to demonstrate that Mr L's actions in the situation were not plausible. Mr L has explained that at the time he didn't think anything of the QR Code not working. I'm mindful that the fraudster's demeanour and ability to replicate genuine processes and procedures had the effect that what was happening to Mr L didn't really register to him as being potentially fraudulent. Mr L has explained that his actions were driven by his desire to protect his funds. Overall, I am not persuaded that Mr L acted unreasonably. I think he has done what a reasonable person would have done in the same situation. As such, I don't think it is fair to conclude that C should share liability with ClearBank for its losses.

My final decision

My final decision is that I uphold this complaint and instruct ClearBank Limited to:

- Reimburse C's full loss of £18,995.13. This includes the £0.60p in transaction fees C was charged
- Pay interest on the above refund calculated at 8% simple per year (less any tax properly deductible*) from 3 September 2022 to the date of settlement.

*If ClearBank Limited considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr L how much it's taken off. It should also provide a tax deduction certificate if Mr L asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

ClearBank Limited should settle the matter within 28 days of receiving notification of the acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision on C's behalf before 9 August 2023.

Claire Marsh
Ombudsman