

The complaint

E is unhappy that ClearBank Limited ("ClearBank") has not refunded it after its directors were the victim of a safe account scam.

What happened

The details are well known to both parties and were set out in the investigator's view, so I won't repeat them here in detail. But in summary, one of E's directors was contacted from a scammer purporting to be contacting her about an account held with a different bank. Both her and the other director of E were convinced to allow the scammer to transfer funds to ClearBank which were then transferred on to the scammer. The following payments were made.

Payment Number	Date	Paid In	Paid Out	Refunded by other bank
1	12/03/2022	£5,000		Yes
2	12/03/2022	£5,000		Yes
3	12/03/2022	£5,000		Yes
4	12/03/2022	£5,000		Yes
5	12/03/2022	£2,000		Yes
6	12/03/2022		£22,000	
7	12/03/2022		£22,000	
8	12/03/2022		£3,800	
9	12/03/2022		£3,700	
10	12/03/2022		£22,000	
11	12/03/2022		£3,500	
12	12/03/2022		£3,500	
13	12/03/2022		£17,500	
14	12/03/2022		£3,500	
15	12/03/2022	£22,000		Yes

16	12/03/2022	£25,000		Yes
17	12/03/2022		£27,000	
18	12/03/2022		£20,000	
19	12/03/2022	£5,974		Yes
20	12/03/2022		£6,400	
21	12/03/2022	£13,200		Yes
22	12/03/2022		£13,200	
23	12/03/2022	£4,800		Yes
24	12/03/2022		£4,800	
Total		£92,974	£172,900	

I issued a provisional decision on 9 November 2023 in which I said the following:

“I’ve provisionally considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

It is not in dispute that the payments in question were authorised. The directors of E were duped by scammers into allowing the transferring of funds into fake ‘safe’ accounts. I therefore accept that this was an ‘authorised payment’, even though E was the victim of a sophisticated scam. So, although the directors of E did not intend the money to go to the fraudsters, under the Payment Services Regulations 2017, and the terms and conditions of his account, the directors of E are presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider ClearBank should fairly and reasonably have been monitoring accounts and any payments made or received. The purpose of which is to counter various risks, including money laundering, the financing of terrorism, and fraud and scams.

Clearbank was required to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so, given the large increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.

In some circumstances, irrespective of the payment channel used, financial business should take additional steps, or make additional checks, before processing a payment. In some cases, financial business will need to decline to make a payment altogether, to help protect customers from the possibility of financial harm. In this case, I need to consider whether ClearBank acted fairly and reasonably when the transfers were made, or whether it could and should have done more before processing them.

I appreciate the first transfer was to a new payee, but similar and greater value transfers were made from this account in the past - including £80,000 a month prior. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. However, I do feel that by transaction 10, the third large payment of £22,000 which was made on the same day as other smaller transactions, ought to have caused ClearBank concern. The evidence indicates that it should've done more to protect E when this payment was made. I think there were indicators that a scam was occurring – meaning ClearBank missed an opportunity to step in and question the payment before it left the account. I'll explain why.

Transaction 10 was the third – quite large - payment to a new payee within a short period of time. I think this activity was unusual. The activity that took place on E's account had the hallmarks of a scam and is exactly the type of suspicious account activity that ClearBank should be on the look-out for.

So, I do think the nature of the transaction was unusual and out of character compared to the usual account activity. I therefore think ClearBank ought fairly and reasonably to have made enquiries about the purpose of the £22,000 payment before it processed it.

I've thought about what would most likely have happened, had ClearBank intervened at this point. I think it is likely that the directors of E would have explained that they were transferring funds to a safe account due to fraud on their account held via a different provider. I also think it's likely if ClearBank had contacted the directors of E, they would've revealed that they had downloaded remote access software to allow a representative of the bank to do this for them – as they'd been instructed to do. Given this, in the circumstances of this case, I think it more likely than not ClearBank would have known by this point that a scam was indeed taking place and the scam could have been stopped at this point.

Should the directors of E bear some responsibility for the overall loss?

I've also considered whether the directors of E should also bear some responsibility for the overall losses. In reaching this conclusion, I've had regard to the scene that was set by the fraudsters and the impact I believe this reasonably had on the directors of E when acting 'in the moment'. I accept that receiving a call purporting to be from their bank using what appeared to be the correct phone number would have been convincing to the directors of E. So, I can understand why they would be concerned and fell victim to the pressure of acting quickly.

That said though, once the scammer started talking about other bank accounts with the directors of E's and asking them to login to other accounts, they held with different providers I think that they should have become more suspicious. After all, no legitimate bank would know what accounts a customer has with other banks, nor is there any plausible reason why a legitimate bank would ask to remotely access an account a customer holds with different institutions. Also, from their testimony, it seems as if the scammer was repeatedly asking them to authorise payments being made from a different bank, which again would seem a highly unusual thing for a bank to ask for. In my view, although I have a great deal of sympathy for the Directors of E, and I recognise that fraudsters use fear and pressure to get people to do something they wouldn't usually do, I also think in this case, there were aspects of the communication that were clear signs that the person they were speaking to may not have been from where he claimed.

I have thought carefully about what realistically the directors of E were reasonably expected to do in such a situation - bearing in mind the pressure of the situation they would have been under in the moment of the call like this. But by the time they were sharing login details from different banks with someone pretending to be from one bank, I think there were enough red flags and time to have reflected and questioned whether they should keep providing the person they were speaking to with further information about their accounts. Also, I note there were reasonably large gaps between the calls with the scammer and the directors of E, that gave them time to reflect on what they were being asked to do – or to contact ClearBank to check whether the unusual requests being received were legitimate or not.

I therefore do feel it is appropriate to reduce the amount of redress the business has to pay to E by 50%.

Did ClearBank do enough to recover Mr A's funds?

I've also thought about whether ClearBank took reasonable steps to recover the funds, once it was made aware of a scam. From what I can see I am satisfied that it attempted to recover the funds from the beneficiary banks as soon as it was made aware of the scam and it recovered what funds were still available. I also note that ClearBank is not signed up to the Contingent Reimbursement Model ("CRM"). So I don't think that it needed to do more in relation to this.

Putting things right

In this instance the total loss to E from the account with ClearBank was £172,900. After I think ClearBank should have intervened there were transactions of £121,400. The other bank has already refunded £92,974. So, the amount not already refunded to E is £28,426. I further note that £19,376.41 was recovered by ClearBank, so the outstanding loss I think that ClearBank is liable for is £9,049.59 I then think that a 50% reduction should apply to this, for the reasons already outlined above.

I note that the investigator calculated this differently, as she deducted the 50% from the transactions that should have been prevented. But our usual approach is to deduct the 50% from the redress due.

I note the comments of E's representative that it believes that the calculation of what should be refunded should be based on how much of the funds sent on were funds already held in the account and how much were funds from the other bank. And that a refund from the other bank should not be used to offset funds that originated from funds already held in the ClearBank account. I have carefully considered this but overall, I think it only fair to calculate how much loss I think that ClearBank are liable for and deduct from this all refunds received as this is in line with what I would usually recommend if money had been recovered as part of a scam. I don't think it fair to ClearBank not to apply the entire amount recovered because it was refunded by a different bank when, all the funds that went into the account from the different bank were sent to the scammer so it was all part of the same overall loss.

Finally I can see that ClearBank made an offer of £75 to reflect delays when the scam was first reported. I think this is appropriate given the overall circumstances of this complaints. As the delays do not seem to have caused an actual financial loss.

I therefore provisionally require ClearBank to:

- *Refund 50% of £9,049.59;*
- *Pay E 8% simple interest, per year, on this amount from the date of each payment to date of settlement (less any tax lawfully deductible); and*
- *Pay £75 to reflect the distress caused by delays when the scam was first reported.”*

In response to my provisional decision ClearBank agreed with my proposed redress, the representative of E did respond and raised a number of points these include

- ClearBank should have intervened earlier than transaction 10
- There was no large transaction of £80,000 the month prior to the transactions in question
- The calculation I have used for the redress is incorrect
- ClearBank should have recovered more than the £19,376.41 it recovered
- There should not be a reduction of 50% for contributory negligence

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 reconsidered everything, including the responses to my provisional decision, I still think that the outcome proposed in my provisional decision is fair and reasonable. I will explain why.

Firstly, I should say that I have already considered and addressed points 1,3,4 and 5 in my provisional decision, but I will address them again briefly.

In relation to points 1 and 2, I remain of the opinion that ClearBank should not have intervened until transaction 10. I note that the representative of E disputes the £80,000 payment made from the account previously, but it does show up on the statements that I have been provided with. A payment for £80,000 debits and is recredited on the same day in February 2022. That said, given that this occurred on the same day, there is a possibility that it may have been some sort of bank error. But even if this payment did not occur the payments into the account in November 2021 show that large transactions were made on this account. This is a company account, and such an account would usually attract larger transactions than a personal account. Also, given the balance of the account, I think that there needed to be a larger number of outgoing payments before to prompt an intervention from ClearBank. In this case I think, albeit on balance, that transaction 10 would have been a suitable place for an intervention.

In relation to point 3 I have already explained my calculation for redress. I think that ClearBank should only refund what it was liable for loss wise, minus any money that was recovered. By this I mean only the payments that I believe ClearBank are liable for made by E out of this account to the beneficiary bank of the scammer, less any funds recovered.

I note that E does not want the amount that ClearBank be liable for be reduced by the amount refunded by the other provider. They have suggested that E should get a refund of the original balance of the account (before the transfers into the account) minus the amount

recovered by ClearBank. But this does not take into consideration the transactions that took place before I think ClearBank should have intervened that I don't think that it is liable for. E seems to argue that some of the money that was sent to the scammer prior to the intervention point should not reduce the amount that ClearBank is liable for because some of the funds sent prior to the intervention point were from the money sent into the account. But as there was already a balance of the account in excess of those transactions, I don't think that I could reasonably say this.

The funds paid into the account from the account held from another provider are not a loss suffered by E it is a loss suffered by the other account which was held on a personal basis and not by E. So it should be removed from the total amount sent from this account and in any event even were it E's loss it has already been refunded so should be deducted from the total loss. Therefore, the amount sent £172,900 should be reduced by £92,974. If I did this the loss to E from this account is £79,926 and the payments made before I think ClearBank should have intervened should be deducted from this loss which totals £51,500. This is because ClearBank is not liable for these payments. This amount £28,426 should be reduced by the amount recovered by ClearBank which is £19,376.41 and this (with the 50% reduction) is the same amount that I recommended. So I am not minded to change the amount that E should receive.

In relation to point 4, I can see that ClearBank did chase the beneficiary bank on the same day that the transactions were reported as scam. I don't think a delay was caused by ClearBank or that it could have acted any sooner.

In relation to point 5, there is not much that I can already add to what I said in my provisional decision. I recognise that scammers rely on pressure and scare tactics and I appreciate that such manipulative behaviour can cause people to do something they wouldn't normally do. But even in such circumstances, I don't think that E should have thought it reasonable that a legitimate financial service provider in the UK would need the login details for their accounts held with other banks or ask them to login to said accounts. There was also enough time for E to have contacted the banks in question between the phone calls and when the transactions started. So I think that there should be a 50% deduction as E was partially responsible for its own loss

So, I uphold this complaint in part.

Putting things right

I therefore require ClearBank to:

- Refund 50% of £9,049.59;
- Pay E 8% simple interest, per year, on this amount from the date of each payment to date of settlement (less any tax lawfully deductible); and
- Pay £75 to reflect the delays when the scam was first reported.

My final decision

My decision is that I uphold this complaint in part and ClearBank Limited should pay E the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask E and E to accept or reject my decision before 18 January 2024.

Charlie Newton
Ombudsman