

## **The complaint**

A charity which I will refer to as 'L', complains that Clydesdale Bank Plc won't reimburse the money they lost following an Authorised Push Payment scam.

## **What happened**

Briefly, in May 2021, L's staff received instructions via an email purportedly from L's Chief Executive Officer, asking them to make a payment of about £65,000 to a 'supplier'. They carried out the instruction. The following week another request was made in the same way to make a payment of about £62,000. Later that afternoon, it came to light that L had fallen victim to a scam.

L contacted their bank Clydesdale who in turn contacted the recipients' banks. The second payment could be fully recovered but unfortunately the first payment could not be recovered as no funds remained in the recipient's account by the time their bank was contacted.

L said that the payments were made without dual authorisation and that shouldn't have happened. They further said that the payments were of high value and therefore Clydesdale ought to have flagged them as suspicious. Had it done so and contacted L, the scam would have come to light. They were also unhappy with the customer service they received from the bank when and after they reported the incident.

One of our investigators considered the complaint and concluded that it couldn't be upheld. They said, in summary:

- Clydesdale has confirmed that dual authorisation was in place when the two disputed payments were made. So, the bank wasn't at fault in relation to this complaint point.
- Having reviewed the previous activities on the account, it can't be said that the payment stood out as being particularly unusual or suspicious for the bank to have intervened before allowing it.
- The bank immediately contacted the recipients' banks, on being advised of the scam. As such there was no delay on part of the bank in taking the action.

L did not agree. They reiterated that the payment was unusual and as such ought to have been flagged as suspicious. They also questioned whether the dual authorisation was in place at the time. Further, they felt that the investigator had not addressed the service issues they had faced.

I issued a provisional decision partially upholding the complaint. That forms part of this decision and should be read together with this final decision. I said:

### **Was there a dual authorisation at the time of scam payments?**

L says that a dual authorisation requirement was in place on the account but when their account migrated to a new system in 2020 the bank failed to carry over that requirement. In

addition, the bank failed to inform them of this change. They say that had these errors not occurred and dual authorisation was in place the scam could have been prevented.

There appears to be considerable confusion as to what exactly happened when the migration took place.

Clydesdale initially told L that the dual authorisation wasn't transferred over to the new system due to a technical error on part of the bank.

However, in their final response letter, the bank said that when L's account was migrated to the new system, the default position under the new system was that single authorisation would be sufficient. This meant that either one of the two signatories of L could authorise the payment. The bank said that it informed L that if they wanted to change that approval status, they were required take certain proactive actions to alter the status back to the one requiring dual authorisation, but L failed to do so. So, Clydesdale said, it made no error in relation to the account not having dual authorisation at the time of the scam.

Subsequently, when our investigator was investigating the complaint, the bank told us that actually dual authorisation was indeed in place at the time of the scam and the transaction was approved by two staff of L.

When this was put to L, they said if that was the case, it raised a different issue. They said that of those two members of staff who were involved in making the relevant payments, only one was authorised to approve payments on behalf of L. So, if what Clydesdale said is correct, then that would mean the other person was somehow able to authorise the payment when they were not allowed to. L questioned how that was possible.

We sought clarification from Clydesdale on this point. The bank has now come back and has said that we were provided with incorrect information and there was no dual authorisation after all. In effect they reverted to what they said in their final response letter.

Thus, the bank's current position seems to be this:

- Dual authorisation was in place in the old system and there were two people (including the CEO) who were authorised and required to approve the payments.
- When the account migrated to the new system, the default position was that each of the authorised signatories were able to approve payments, i.e., a single authorisation was sufficient to approve the payments.
- And that was the case when the relevant transactions took place, i.e., the payments went through on single authorisation of one of the signatories.

The bank however reiterated its position that this happened because L failed to take proactive steps when the migration took place.

It is unfortunate that the bank has provided different explanation at different times as to what exactly happened. However, having considered the submissions, I accept that when the transactions took place, the position most likely was that there was no dual authorisation requirement.

**If there was no dual authorisation, was this due to an error or omission on part of the bank?**

I can see that it would have been helpful to L had the bank carried the existing approval status across to the new system. However, I can't say that the bank made an error when it

reset the approval status on migration to the new system. This is so long as L was made aware of this.

The bank says that L was made aware of this, in particular through a communication it sent in October 2020. It has provided me with a copy of the letter. From the information provided by L, I see that the bank gave a copy of this letter to L as part of the investigation into this scam. Nevertheless, I have asked the investigator to include a copy with this provisional decision.

This is a sample of the letter sent to the customers of the bank at the time. However, the bank has confirmed that L was part of a particular tranche of customers to whom the letter was sent. In addition, when a copy of this letter was provided to L, as stated above, I see that L hadn't disputed receiving the letter. I also see that around mid-November 2020 L contacted the bank about the new system, possibly on the back of the letter. So, from what I have seen so far, I consider it more likely that this letter was received by L.

The bank has highlighted the following section in the letter which says: *"Payment approval rules: The way payment approval rules are set up in BIB differs to Business Online and the Business' approval settings will have changed in BIB. The designated Corporate Administrator will need to review and confirm approval limits and approver status (either a single or dual approver) for each Corporate Administrator and Additional User when they complete their first time login....."*

I consider that this section did indicate that L needed to review the approver status upon migration and amend as needed. In addition, the fraudulent transactions took place several months after the migration. During the intervening period, I gather that L made several payments and these would have been made with just one of the two signatories authorising it. So, I think that L did have an opportunity to realise what was going on subsequent to the migration as well.

Overall, from what I have seen, I can't say that the lack of dual authorisation when the relevant payments were made was due to an error or omission on part of the bank.

#### **Lack of intervention by the bank at the time of payments**

L says that the transactions were unusual to their normal account activity and so when they were made, the bank ought to have treated them as suspicious and intervened. I will consider this point with specific reference to the first payment as the second payment in any case has been fully recovered.

As the Investigator has said, in broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make. However, there are circumstances where it might be appropriate for banks to take additional steps – as for example have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud.

I have reviewed L's account statement for about six months prior to the payment to the scammer, to understand the general account activity. Over the period, I see that this was an active account. It is the case that the payment to the scammer was one of high value compared to normal transactions. However, there was one payment of similar size that happened just a week earlier. L contends that it was to an existing payee whereas the fraudulent payment was to a new payee. However, I am not persuaded that the payment to a new payee ought to have automatically given the bank a cause for concern as occasional higher new payments could happen on an account.

Further, whilst the amount was high, it represented a relatively small proportion of the account balance. It did not for example consume all or substantial proportion of the funds in L's account – which might have been an indicator it was at risk of fraud. In addition, though there was no dual authorisation, the payment was set up by one person and was authorised by another. That would have given added comfort to the bank.

I understand why L contends that when this payment was made, the bank ought to have intervened. However, taking all of the above into account, I can't say that the bank ought to have considered the payment as suspicious for it to have intervened. I'm not persuaded that there was enough here for me to find the bank was at fault in carrying out L's payment instruction in line with its primary obligation to do so.

### **Customer service**

L is also unhappy with the way this whole issue was handled by the bank. L explains that when the scam came to light, they immediately tried to contact the bank over the phone without success. So, they had to go to a branch to report the scam but were told that the branch couldn't help. They then have to try and contact various people / departments at the bank to reach someone to report the fraud, and eventually after about two hours could report the fraud.

The bank however immediately contacted both the recipients' banks. And as noted earlier, one of the payments was fully returned. I have reviewed what happened in relation to the unrecovered payment and find that the funds had already left the recipient's account prior to the second payment anyway. So even if there had been no delay of two hours, the funds couldn't have been recovered. That said, I can see that the difficulty in contacting the bank caused some inconvenience to L.

In addition, I have already noted that the bank gave conflicting information around the dual authorisation. I can see that this caused unnecessary confusion and inconvenience to L as they had to engage in multiple conversations with the bank to fully understand what went wrong.

Taking these into account, I consider it fair that the bank pays a total of £300 for the inconvenience caused to L. I know that this amount is much less than what L thinks the bank should pay. However, I consider that this is fair and reasonable in all the circumstances of the complaint.

### **Summary**

L has unfortunately been a victim of a sophisticated scam and I am sorry for the loss they incurred as a result. I can see why they are unhappy with the bank. However, having considered what had happened, it is my provisional conclusion that there hadn't been an error or omission on the part of the bank in relation to this matter. However, the bank did cause some inconvenience to L, particularly due to poor / lack of communication after the scam and I consider it should pay £300 to L in regard to this.

### **What happened after my provisional decision?**

Clydesdale responded to say they have nothing further to add. We did not receive any response from L.

**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, I see no reason to depart from my provisional decision. I remain of the view that the settlement set out in my provisional decision represents a fair and reasonable outcome to this complaint.

**My final decision**

My final decision is that the complaint should be partially upheld, and in full and final settlement of the complaint Clydesdale Bank Plc should pay £300 to L.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 9 November 2023.

Raj Varadarajan  
**Ombudsman**