

## **The complaint**

A company which I will refer to as 'P', complains that ClearBank Limited won't reimburse the money they lost in connection with a scam.

As I understand it, P is a customer of Tide Platform Limited ('Tide'). Tide offers its customers such as P, bank accounts with ClearBank Limited. As this complaint is in relation to P's account with ClearBank, the bank is ultimately responsible for this complaint. So, for ease of reading, I'll refer to ClearBank throughout, but where relevant, the reference should be understood as meaning Tide.

## **What happened**

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, in November 2022, the director of P – who I will refer to as 'L', was contacted by a scammer pretending to be from ClearBank. The scammer said that P's account (with ClearBank) had been compromised and therefore P should move the money to a 'safe account'.

L then received a text which gave the new account details, and she was asked to enter P's name as the account name. She proceeded to set up this account but when the caller asked her to transfer about £9,000 to this account, she became suspicious and disconnected the call. She did not proceed with the payment.

L was concerned that the company's bank account may have been compromised. As she was due to go on a holiday, she decided to transfer the funds out of the account to another account the company had with a different bank. She thought that way she could keep the money safe whilst she engaged with ClearBank to sort this issue out. She proceeded to transfer out almost all of the money in the account. But unfortunately, she inadvertently transferred the funds to the newly set up account of the scammer instead of P's genuine account with the other bank.

After she made the transfer, L contacted ClearBank and informed them of the attempted scam and told them that she had transferred the money to another P's account.

The error came to light after L returned from the holiday. She immediately reported the error to ClearBank who in turn contacted the recipient's bank. Unfortunately, the money had been withdrawn from the recipient's account by that time.

L complained to ClearBank as she was unhappy with the support provided by it. She also thought that her payment instruction to transfer the money to another of P's account was somehow intercepted and the money went to the scammer's account instead. ClearBank did not agree that it made any error.

One of our investigators considered the complaint and concluded that it should be upheld. In summary they were of the view that ClearBank missed a couple of opportunities to help prevent the money being transferred to the scammer's account. So, the investigator recommended that ClearBank reimburse P the sum lost. ClearBank did not agree.

### **My provisional decision**

I issued a provisional decision upholding the complaint, which forms part of this decision. I said:

*"I agree with the investigator that the complaint should be upheld for the reasons they have set out in detail – subject to an amendment to the compensation which I explain below.*

*I agree that the disputed transaction was unusual to the normal account activity. It was far higher than typical level of faster payments which tended to be around £3,000 to £4,000. ClearBank has pointed us to a payment of about £11,000 two weeks earlier. However, that appears to be a card payment not a faster payment (so a different mode of payment). In relation to faster payments, the next highest payment on the account during the preceding year was about £8,500 but that appears to be to the other account of P (which was an existing payee).*

*It was also the case that the disputed payment reduced almost all of the balance on the account. It isn't necessary for 100% of the funds to be transferred out in order to pose a concern to ClearBank to intervene. I consider this was a large enough movement. ClearBank has referred to a previous occasion that occurred several months ago when, it says, the balance was fully drained, but the transaction wasn't fraudulent. However, ClearBank couldn't have known this for certain when the disputed transaction took place.*

*ClearBank has also explained that its transaction monitoring system is fully automated. It is based on complex machine learning and takes a lot of factors into consideration when deciding if a payment should be stopped. But there was no concern on this occasion.*

*Ultimately, it is a matter for ClearBank as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. But where it is alleged that it didn't do enough to prevent a loss which resulted from an authorised push payment fraud, I will look into the circumstances of the case and based on what I have seen, decide whether in that case ClearBank could have fairly and reasonably done more.*

*In this instance, I consider that the payment was unusual and so it is reasonable to expect ClearBank to have intervened and communicated with P to ensure that the payment was authorised by them, and that the money was being sent to where it was intended. And for the reasons explained by the investigator, I agree that had ClearBank done so, it was more likely that the error made by L would have come to light and the payment to the scammer could have been prevented. I also agree with the investigator that ClearBank had another chance to try and prevent the loss to P when L contacted it to report the loss. Here again, with proper engagement it was more likely that the error would have come to light.*

*ClearBank agrees that it could have done more but considers that would not have changed the outcome. In particular ClearBank says that even if the error had come to light and it contacted the recipient bank immediately there was no guarantee that they would have taken swift action. It has given us an example of what had happened in a different case to make its point. Firstly, it cannot be said with certainty that is what would have happened here. Secondly, had ClearBank contacted the recipient bank, but that bank did not take*

*adequate steps to help prevent the loss to P, the company would have been able to complain to that bank about their inactivity.*

*On balance, I don't think it could be said that there still would have been no change in the outcome had ClearBank contacted the recipient bank promptly. ClearBank has referred to the Confirmation of Payee message that was presented when L set up the new payee. I don't think that is a key consideration here. As the investigator has pointed out, L did not ultimately proceed with the payment at the time she set up the new payee and received the CoP message. It was only later that she made the payment, inadvertently, to the scammer's account.*

*Overall, I agree with the investigator that the complaint should be upheld. However, I accept ClearBank's contention that P should bear some responsibility for transferring the funds to the wrong account. L was in effect transferring practically all the money in the account. And it was a considerable sum. So, it is reasonable to expect that she took care to ensure that the money was being transferred to the right account.*

*Generally, the starting position in cases where both parties could have done more to prevent the loss is that it is shared equally. However, I consider that there are some mitigating circumstances here in favour of P.*

*When the scammer called L and tried to persuade her to transfer the money, she ultimately didn't fall for the scam. She became suspicious and disconnected the call, which was the correct action to take. She did not make the payment.*

*I see from the submissions that she was still worried that somehow the fraudster had gained access to the account. So, she decided to act swiftly to move the money to P's genuine account with another bank where she thought the money would be safe. She then alerted ClearBank to the scam. I consider through all of this she demonstrated reasonable efforts to protect the funds. It was only when transferring the money, unfortunately she made an error.*

*In cases like this how the apportionment of the losses should be made is not an exact science. I think the error or omission by ClearBank was more significant compared to L's inadvertent error. So, after weighing up everything, I think it is fair that 80% of the loss is borne by ClearBank and 20% by P.*

*This means ClearBank should reimburse P 80% of the money that was transferred to the scammer (which I understand was £16,500) less any sum subsequently recovered. It should also pay simple interest at 8% p.a. on this amount. Interest should be paid from the date of payment to the date of settlement."*

#### **Responses to my provisional decision**

P accepted my provisional decision, but ClearBank didn't. It said, in summary:

It is true that ClearBank did have an opportunity and cause to step in and review the situation further. However, it is worth noting that when L reported to ClearBank that she had received the call, she explicitly told ClearBank that she had transferred her funds out to an external account of P specifically to safeguard it. There was no prompting on ClearBank's part to review those payments, though it is regrettable that the agents assisting L did not take the initiative to look into the matter directly.

However, this does not constitute an increased liability on ClearBank's part, though it largely agrees with the rest of the findings. The payment should have been stopped given it was unusual for previous use of the account.

It remains that the payment was made in error even though L intended to do the right thing to protect the funds in this case. As such, ClearBank would agree to sharing liability for the payment and reimburse P 50% of the loss incurred, together with interest.

### **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 the conclusions I reached in 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.

ClearBank accepts that it ought to have intervened when the payment was made. It has also accepted that later when L contacted it, its agent could have looked into what was going on more closely. I remain of the view that had such interventions occurred, with adequate questioning as explained by the investigator, L's error could have been identified. Either the payment could have been prevented in the first instance or later the error could have been identified. And then had ClearBank contacted the recipient bank swiftly, the money could have been retrieved.

As in my view ClearBank failed to help prevent the loss to its customer P, the starting point is that it should reimburse the loss in full to P. However, I have also taken into account whether L (acting on behalf of P) contributed to the loss being incurred. In my view that was the case here because L transferred the money to the scammer's account, albeit in error. So, I understand ClearBank's argument that the loss should be shared equally by both parties. However, it is also fair and reasonable to take into account any mitigating circumstances in deciding the extent of loss that should be borne by P for any negligence on its part.

As I explained in my provisional decision, despite a persuasive call from the scammer, L did not fall victim to the scam. However, she was worried and distressed that a scammer had access to P's account. She was going on a holiday soon and so she had to act swiftly to do what she could to protect the money. Unfortunately, in doing so she chose by mistake the account the scammer had asked her to set up. That account had the same name as the other account to which she wanted to transfer the money. As I said she was in distress at the time and so I can see how the error was made inadvertently. She then took the correct step to alert ClearBank to the scam. So, given that she acted correctly all along but for that unfortunate error, it doesn't seem fair that P should share 50% of the loss compared to the situation where ClearBank missed two separate occasions to help prevent the loss to its customer.

As I said in my provisional decision, in cases like this how the apportionment of the losses should be made is not an exact science. In this instance, for the reasons given, I remain of the view that it is fair P bears 20% of the loss and the balance borne by ClearBank.

**My final decision**

My final decision is that the complaint should be upheld. In full and final settlement of the complaint ClearBank Limited should reimburse P 80% of the money that was transferred to the scammer less any sum subsequently recovered. It should also pay simple interest at 8% p.a. on this amount. Interest should be paid from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 15 December 2023.

Raj Varadarajan  
**Ombudsman**