

## **The complaint**

A limited company, J, complains that ClearBank Limited didn't do enough to prevent the loss they suffered when their director (Mr C) was tricked into making a payment as a result of a scam.

J and Mr C have used a representative to bring their complaint, but for ease of reading, I'll mostly just refer to J or Mr C rather than the representative.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In August 2022 J was sadly the victim of a scam. Mr C lost his wallet (containing J's ClearBank card) and then received a text indicating spending was being attempted. Ultimately Mr C spoke to someone who tricked him into believing he was speaking to a representative from ClearBank. This was a sophisticated scam which involved text messages appearing in an existing thread between him and ClearBank.

Mr C was persuaded that he needed to move J's funds to a 'safe account'. As a result of this he instructed a payment for around £9,975 on 15 August 2022 to the account details he was provided with. At the time he believed this was going into a new account that had been set up for J. Soon after making the payment Mr C realised there might be a problem and contacted ClearBank. But ClearBank didn't respond until the following morning.

ClearBank contacted the recipient bank and said they were told that no funds remained. They also declined to provide a refund to J and so Mr C complained. ClearBank said that they should have contacted the recipient bank sooner, but that the information they had meant this wouldn't have made a difference (as the funds were all spent very quickly from that account). They offered £25 compensation for the inconvenience caused.

The matter was referred to our service and one of our Investigators didn't recommend it should be upheld. In summary she didn't think ClearBank should have done more before processing Mr C's payment. J disagreed and asked for an Ombudsman to review their complaint.

## **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.

I'm aware that J also complained to the bank that received their funds. And that complaint was considered by our service and resulted in redress to J of around £6,100. Clearly this still leaves J at a loss and so I've considered whether ClearBank ought to refund the outstanding loss (or part of it).

ClearBank's first duty is to execute the payment instructions their customers provide. But they also have obligations to be alert to fraud and scams and to act in their customers best interests. Part of Mr C's submissions are that he didn't authorise the payment as he didn't know it was going to a scammer. I understand the point Mr C is making, but under the relevant regulations, the payment is considered authorised because Mr C instructed it through the agreed processes with ClearBank. So whilst I appreciate he didn't intend to pay a scammer, it was an authorised payment.

That being said, ClearBank should be on the look-out for payments that might be being made as a result of a fraud or scam with a view to protecting their customers. So, my next consideration is whether the payment was so unusual, uncharacteristic or suspicious that I think ClearBank should have done more before processing it.

I've considered J's points that the £9,975 payment used the majority of the available balance and that it was to a newly set up payee, whereas previous larger payments were to existing payees. But even taking that into account, given the type of account and its overall previous use and activity, I don't think the payment relevant to this complaint was so unusual that I'd have expected ClearBank to have stopped it at the time. The account history shows that it wasn't unusual for payments of similar amounts to be instructed from time to time.

I agree that ClearBank should have acted sooner upon notification of fraud from Mr C. But I'm also satisfied that this failure didn't impact what could be recovered from the recipient bank. And I think the £25 offered to J is a fair amount for any inconvenience caused. If this hasn't already been paid, Mr C should contact ClearBank to arrange this.

I'm sorry that J are left with an outstanding loss as a result of the scam. But as I don't think ClearBank are responsible for anything that caused this, or that made a difference to what could be recovered, there isn't a reasonable basis upon which I can direct them to do more to resolve this complaint.

### **My final decision**

For the reasons outlined above, my final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 5 October 2023.

Richard Annandale  
**Ombudsman**