

The complaint

R, a limited company, complains that ClearBank Limited won't refund the money it lost when it was the victim of a scam.

What happened

R is a limited company, whose main business is in construction. In June 2022, one of R's directors received a call from someone claiming to be from ClearBank's fraud department. The caller said they were investigating some suspicious activity on R's account and asked the director to scan some QR codes in order to secure the account – which the director did. The caller then asked the director to confirm some recent transactions on R's account, at which point the director noticed that a payment of £9,640.10 had been made out of the account, clearing the entire balance.

Another director of R then contacted ClearBank separately to confirm if the call was genuine, but ClearBank confirmed it wasn't and R was likely the victim of a scam. R then reported the payment to ClearBank as fraud and asked it to refund the money it had lost.

ClearBank investigated but said R had authorised the payment by sharing a code with the scammer. ClearBank didn't think it should have recognised the payment as suspicious, as other payments for similar amounts had previously been made from the account. And it didn't think there was anything it could have done to recover the payment once it had been sent. So it didn't agree to refund the money R had lost. R wasn't satisfied with ClearBank's response, so referred a complaint to our service.

I sent R and ClearBank a provisional decision on 24 November 2023, setting out why I wasn't intending to uphold the complaint. An extract from my provisional decision is set out below:

"Did R authorise the payment?"

Generally, a business can hold a customer liable for disputed transactions on their account if the evidence suggests it's more likely than not that the customer authorised the payments.

Deciding whether a customer has authorised payments is a two-part test. Firstly the payments must be authenticated, and secondly, the customer must have consented to the payments being made. And this doesn't necessarily require proving that the customer made the payments themselves, as it is possible for a customer to consent to someone else making payments on their account.

Clear Bank has sent us evidence which shows the payment was made using R's online banking profile. This means the payment was correctly authenticated, and so I must also think about whether the evidence suggests it's more likely than not that R consented to the payment.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

R has said one of its directors was asked to scan QR codes using their ClearBank mobile app in order to secure the account, and that they did scan these codes. But it appears these codes were actually granting the scammers access to R's online banking, via a web-version of the mobile app.

Even once the scammers had access to R's online banking in this way, ClearBank says the scammers wouldn't have been able to make any payments because any payments set up using the web-version of the app need to be approved in the original mobile app. It says if any payments were set up using the web-version of the app, a passcode would have been sent to the mobile app with a code that needed to be entered before the payment could be made.

R says it didn't know any payments were being set up and its director doesn't remember entering any codes or approving any payments. But, from what ClearBank has sent us, I'm satisfied the scammers wouldn't have been able to set up any payments using just the web-version of the app the QR codes gave them access to. And the evidence ClearBank has sent us of the activity on R's genuine mobile app shows that a payment was approved shortly before the scam payment was made.

So while I appreciate R's director says they don't remember entering any codes or approving any payments, I think the evidence here suggests they did do so. And as ClearBank has shown that the code I think they were sent would have said it was to complete a payment, I also think this means R was aware a payment was being made out of its account.

And so I think R did consent to the payment being made, and did authorise the payment.

Did ClearBank do enough to protect R?

In broad terms, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And a customer will then be responsible for those transactions that they have authorised. So while I recognise that R didn't intend the money to go to scammers, as I think it did authorise the payment, the starting position in law is that ClearBank was obliged to follow its instructions and process the payment. So R isn't automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So I've also thought about whether ClearBank did enough to try to keep R's account safe.

But while the payment was for a relatively large amount of money, there were also a number of other payments for significant amounts both into and out of R's account in the months before the scam. It also wasn't unusual for R to make this type of payment, for a number of payments to be made on the same day – as they were here, or for the balance of the account to fluctuate significantly.

This type of business account is also often used by customers for occasional large payments, so I think it's reasonable that ClearBank takes this into account when looking at whether certain payments are unusual.

So I think it's reasonable that ClearBank didn't identify this payment as particularly unusual or suspicious, and didn't intervene or ask any further questions before allowing it to go through. I don't think not stopping this payment means that ClearBank didn't do enough to protect R.

Did ClearBank do enough to recover the money R lost?

Once they have been notified of a scam, we expect account providers to take reasonable steps to try to recover any money their customers have lost. So I've also considered whether ClearBank did enough to try to recover the money R lost.

ClearBank contacted the bank the money was sent to, and was able to recover £0.42 which has been paid into R's account. But the bank the money was sent to has said the rest of the funds were removed from the account they went to around one minute after R's director first contacted ClearBank to ask whether the call it had received was genuine. So I don't think anything we would reasonably have expected ClearBank to have done would have been able to recover any more of the money R lost.

I appreciate that R has been the victim of a cruel scam and has lost a significant amount of money. But I can only look at the actions of ClearBank and, for the reasons I've set out above, I don't think ClearBank has acted unreasonably or that anything we would expect it to have done would have prevented the scam or recovered any more of the money R lost. So I don't think it would be fair to require it to refund the money R lost."

I said I'd consider anything further R and ClearBank sent in following the provisional decision, provided it was received by the deadline given.

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.

ClearBank responded to the provisional decision saying it agreed with it. And R responded saying it did not agree with the outcome. But neither provided any further evidence or arguments to be considered.

As neither R nor ClearBank provided anything further to be considered, I still think the conclusions I set out in the provisional decision are correct, and for the same reasons.

So I still don't think ClearBank acted unreasonably or that anything we would reasonably expected it to have done would have prevented the scam or recovered any more of the money R lost.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or

reject my decision before 11 January 2024.

Alan Millward
Ombudsman