

## **The complaint**

A company which I will refer to as 'E', complains that ClearBank Limited won't reimburse the money the company lost following an Authorised Push Payment (APP) scam.

## **What happened**

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

Briefly, in April 2022, a scammer persuaded a director of E to transfer funds from their personal account, which they had with another bank, to E's business current account with ClearBank. And then transfer out £25,000 from ClearBank to a third-party account with his bank. This was on the pretext that his bank was protecting his funds. By the time the scam was discovered and reported, unfortunately no money remained in the recipient's account. E complained to ClearBank that it failed to prevent the scam from happening.

One of our investigators reviewed the complaint and concluded that it couldn't be upheld. They said that ClearBank correctly followed E's payment instructions. The relevant transactions were not particularly unusual to the normal account activity for the bank to have intervened. The payment was to a new payee, but this alone wouldn't have given B much cause for concern. There was also no interaction between the bank and E when the payment was made. So, it is difficult to conclude that the bank missed an opportunity here to help prevent the loss to E. There was a slight delay on part of the bank contacting the recipient's bank, but this delay did not cause any loss to C. The funds had been removed from the recipient's account even before E notified ClearBank of the scam.

E did not agree. Their representative said that even though there have been a couple of previous large payments out of the account, the average value of the transactions out of E's account was about £3,000. So, a payment of £25,000 should have warranted further checks from the bank before being released and had those checks been carried out, the scam could have been uncovered and the loss prevented.

## **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 agree with the Investigator, broadly for the same reasons.

As I understand it, the money transferred into E's account has been accounted as a director's loan to the company and as such due to be paid back to them. In fact, it appears some amount has already been paid back the director. So, it seems that the company has suffered the loss due to the scam.

E, through their representative, have provided detailed submissions to support their complaint, which I have read and considered in their entirety. However, I trust that they will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in less detail, as a discourtesy. The purpose of my decision is not to address every point raised in detail, but to set out my conclusions and reasons for reaching them.

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 E's account statements for a year or so prior to the payment to the scammer, to understand the general account activity. Over the period, I see that this was an active account with many incoming and outgoing transactions. It is the case that the payment of £25,000 was higher compared most others but occasional higher payments could happen on an account. For example, I see that there was a payment for about £16,000 in October 2021, £18,000 in January 2022 and about £36,000 in March 2022 (which was higher than the relevant payment). Likewise, there have also been prior occasions where there were multiple incoming credits / transfers on the same day. The payment was to a new payee, but this alone wouldn't have given ClearBank much cause for concern, given the level of activity on the account.

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 the bank could have fairly and reasonably done more.

After taking all of the above into account, I can't say that the disputed payment stood out sufficiently from the prior account activity to reasonably have prompted ClearBank to take further action. I'm not persuaded that there was enough here for me to find ClearBank was at fault in carrying out E's payment instruction in line with its primary obligation to do so.

There was some delay in ClearBank contacting the recipient bank. However, the available information show that the funds had already been withdrawn before E contacted ClearBank to inform them of the scam.

I know this will come as a disappointment to E as they had fallen victim to a sophisticated scam. But I can only make an award against a bank if that bank has done something wrong, which has led to a loss. In this case, for the reasons given I am not persuaded that there was any error or omission on part of ClearBank which has resulted in E's loss. As such I can't fairly or reasonably ask it to refund their loss.

## **My final decision**

My final decision is that I do not uphold this complaint.

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

Raj Varadarajan  
**Ombudsman**