

The complaint

Ms S complains that Clearbank Ltd didn't do enough to prevent her losing money to an email interception scam.

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 2022 Ms S was the victim of a scam. Emails between her and her former partner were interfered with. This meant that when she made a series of payments to return funds she owed, instead of going to her former partner, they instead went to an account controlled by a scammer.

As a result of the scam, Ms S made five transfers, each for £10,000. They were all sent from her sole trader ClearBank account and were received in another account, also held with ClearBank. The first payment was made on 11 August 2022 and the remaining four took place the following day. When Ms S realised she'd been the victim of a scam, she reported this to ClearBank. Ultimately ClearBank were only able to recover and return around £6 and said they couldn't provide further redress.

Ms S complained and ClearBank maintained their position with regard to the lost funds. They did however say there had been some delays in chasing 'second generation' funds on their part and offered £100 compensation for the impact of this. Ms S referred her complaint to our service and one of our Investigators recommended it should be upheld. In summary she thought that ClearBank should have done more in relation to the recipient account and that this could have prevented £20,190 of Ms S' loss. So she recommended that ClearBank pay this amount to Ms S.

ClearBank accepted this outcome but Ms S didn't. She thinks ClearBank should refund her entire loss and she asked for an Ombudsman to review her complaint. In November 2023 I issued a provisional decision in which I said:

"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've reached a slightly different outcome to that of our Investigator. And so I'm issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision.

I'm sorry to hear Ms S was the victim of a scam in this way. And I can quite understand why she wants to do all she can to try to recover her funds. But it would only be fair for me to direct ClearBank to make a payment where they are responsible for errors that otherwise would have prevented the loss or a part of it.

Ms S has mentioned the Lending Standards Boards Contingent Reimbursement Model Code (CRM Code). This is a voluntary scheme through which victims of Authorised Push Payment (APP) fraud can sometimes receive redress from the banks involved. But it isn't a relevant

consideration in this complaint because ClearBank haven't signed up to the CRM Code and aren't obliged to. I appreciate Ms S is disappointed by this and thinks ClearBank should have signed up to the code or at least clearly publicised that they haven't. But the CRM Code at the time relevant to the complaint (and at the time of writing) is voluntary. So I can't fairly criticise ClearBank for not signing up and I don't agree this is something they were obliged to publicise. Which banks are and aren't signed up to the CRM Code is information that is freely available in the public domain and I'm sure it's something ClearBank would have responded truthfully to, if the question had been asked of them.

But just because ClearBank haven't signed up to the CRM Code, this doesn't mean they don't need to take steps to try to prevent fraud, scams and the misappropriation of funds. Ms S accepts that she instructed the payments relevant to this complaint, albeit having been tricked into paying a different account. So, I've gone on to consider whether ClearBank as Ms S' bank ought to have done more than they did before following those instructions. And I don't think they needed to.

Banks can't be involved in every transaction and clearly there is a balance to be struck between stopping and checking payments that present an increased risk. So key to this is whether there was any reason for ClearBank to have intervened on the basis of the payments being so unusual, suspicious or indicative of potential fraud where they reasonably should have. The previous statements from Ms S' account indicate that it wasn't unusual for her to make payments broadly similar to those she made as a result of a scam.

Three days prior to the scam Ms S sent two payments each for £10,000 in one day. And there was another occasion in June 2022 where four payments totalling £35,000 were sent in a single day. Payments like these (and others like them) mean that I just don't think those made towards the scam would have stood out to ClearBank as unusual or suspicious. That type of activity was reasonably common on Ms S' account. And the fact that the payments to the scam would have been to a new beneficiary (when the others I've referenced likely weren't) doesn't change my mind on this. So I don't think ClearBank reasonably should have done more before processing the payments in question or that they should have prevented Ms S' loss in this way.

The recipient account was also held with ClearBank. And Ms S complains that they didn't do enough due diligence before opening that account. She highlights that ClearBank advertise the ease of opening an account with them which she believes means they weren't as diligent as they should have been. I've seen evidence of the electronic checks ClearBank conducted throughout the account opening process. And I've also seen evidence in the form of a utility bill they took from their customer for additional proof of address. And overall, I don't think ClearBank failed when opening the account. There was nothing at that stage that indicated that the account might later go on to be used in connection with a fraud or a scam.

I've next considered the activity on the recipient account. Following receipt of Ms S' funds, transfers began to be made from the account. I've set out the relevant activity in the below table.

Time (where known) and Date	Amount	Notes
7.08pm 11 August 2022	£10,000 credit	Payment arrives from Ms S.
After 7.08pm 11 August 2022	£5,000 debit	Outgoing payment to G
After 7.08pm 11 August	£4,980 debit	Outgoing payment to G

2022		
5.17pm to 5.19pm 12 August 2022	4 payments of £10,000 Credit	Incoming payments from Ms S
5.26pm 12 August 2022	£5,000 debit	Outgoing payment to G
5.32pm 12 August 2022	£4,950 debit	Outgoing payment to H
5.33pm 12 August 2022	£4,940 debit	Outgoing payment to H
5.34pm 12 August 2022	£4,920 debit	Outgoing payment to H
5.36pm 12 August 2022	£4,900 debit	Outgoing payment to H
5.37pm 12 August 2022	£4,890 debit	Outgoing payment to H
5.38pm 12 August 2022	£4,800 debit	Outgoing payment to H
5.40pm 12 August 2022	£5,600 debit	Outgoing payment to H

The majority of the initial £10,000 that Ms S sent on 11 August 2022 was transferred out the same day. I don't think this activity was so unusual given the type of account and its expected and intended use where I'd have expected ClearBank to have done more at the time.

The following day the four further £10,000 credits arrived. Again, I don't think this on its own ought to have prompted ClearBank to have blocked the account (something I'll come to in more detail below). But those funds began to be transferred out, and I think it reached a point where it was reasonable to expect ClearBank to have intervened. I think that point was upon the instruction of the payment for £4,900 at 5.36pm. By this stage there were several payments being made in quick succession. It was following the pattern of the previous day where funds had arrived and been transferred out and was potentially indicative of fraud. Given what ClearBank knew about their customer (from information taken at account opening), it also represented outgoing payments of almost the total anticipated yearly turnover for that account in just two days.

And I agree with our Investigator that had the account been blocked and a review undertaken, it's likely the scam would have come to light and further funds would have remained in the account available for recovery. I say this because both accounts were held with ClearBank and given the sectors of their respective businesses, there isn't an obvious reason for a connection between them. Further to this, ClearBank easily could have reached out to Ms S (as she was also their customer) to confirm the purpose of her payments, which clearly would have uncovered the scam at the time.

At that point, £20,210 of the original £50,000 would have remained available for recovery. However, as £6.26 was recovered from the funds sent to H I think it's fair to deduct this from what ClearBank need to pay. This leaves the amount to be paid as £20,203.74. I also think 8% simple interest should be added to be calculated between 12 August 2022 and the date of settlement. This is to compensate Ms S for being without those funds for that period of time.

I've considered whether there should be a reduction in award in this case due to contributory negligence on Ms S' behalf. And I don't think there should be. It seems Ms S was taken in by a convincing scam. At the time of instructing the payments, I don't think she either knew or reasonably ought to have suspected something was wrong and continued despite this.

Ms S has suggested that her incoming payments ought to have been a cause for intervention by ClearBank. The recipient account was held by a business and it isn't unusual for such accounts to receive significant sums. That being said ClearBank should be monitoring their accounts, and in this case the payments received were for more than the account holder had anticipated for that particular account (based on the information gathered at account opening). But I don't think this is something that reasonably should have resulted

in ClearBank blocking the account. Given the type of account and that there was nothing else that I think was concerning or suspicious about the incoming payments, in the circumstances of this complaint, the most I would have expected is for this to have potentially flagged for a review. I don't think blocking the account at that stage is something that reasonably could have been expected. And as I think ClearBank ought to have intervened as I've set out above (within 20 minutes of Ms S' last credit to the account), I don't think any review based on the incoming payments should have occurred sooner than the intervention that I think should have happened due to the account activity.

ClearBank have also confirmed that they hadn't received any other notifications of fraud in relation to this account prior to Ms S' funds being transferred out. So, I don't think there was an error or missed opportunity to act by ClearBank in this regard.

For completeness, I've also considered that ClearBank contacted 'second generation' banks where the funds were sent on to and this is what resulted in the recovery of around £6. So, I've gone on to consider whether more could have been recovered, had the scam been discovered sooner. As I've set out above, I think ClearBank ought to have intervened at 5.36pm on 12 August 2022. But they still then would have had to have investigated before they could have reported that the funds that had already been sent on from their customers account were linked to a scam. As a minimum this would have involved speaking to their accountholder and potentially also speaking to Ms S as the original sender of the funds. I've sought evidence from the business with whom H held their account. And these show that the payments for £4,950, £4940 and £4,920 which took place between 5.32pm and 5.34pm were all spent from that account in under five minutes. This clearly would have been insufficient time for ClearBank to have conducted an investigation. So, I don't think the scam coming to light sooner would have impacted on what might have been recovered from the funds sent to H.

I think ClearBank took reasonable steps and chased appropriately for the funds sent to both G and H. I can't hold ClearBank liable for the actions / communication from the second-generation banks. ClearBank offered Ms S £100 compensation for any of their delays in the handling of the matter, and given I'm not persuaded this impacted the loss she's suffered, I think this is a fair way to put things right for any distress and inconvenience caused.

Ms S has also said that she believes ClearBank failed to co-operate with the police. Beyond her testimony I've not seen any other evidence that this was the case. But even if it were, it wouldn't change my mind as to the outcome of this complaint. The evidence she has shared from the police officer investigating included him managing Ms S' expectations about the likelihood of a successful prosecution, the chances of which he thought were low. So, I'd need to be persuaded that both ClearBank had unreasonably failed to co-operate with the police and importantly, but for that failure, Ms S would have received money back (presumably as a result of a suspect being apprehended). Based on the evidence from the police officer, who said that cases like this sadly often don't result in a successful prosecution, I don't think that is the case. If Ms S has further evidence of both the alleged failure and that this would have made a difference to her loss, I'd be happy to consider it if she supplies it in response to this provisional decision.

My provisional decision

For the reasons outlined above, but subject to any further information I receive from either Ms S or ClearBank, I'm intending to uphold this complaint.

I intend to direct ClearBank Ltd to pay Ms S £20,203.74. 8% simple interest should be added

to this amount to be calculated between 12 August 2022 and the date of settlement. If the £100 compensation referred to in ClearBank's complaint response hasn't already been paid, this too should be paid to Ms S."

ClearBank responded to say they accepted my provisional decision. Ms S responded and said she still disagreed but had no further points to make.

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.

As neither party provided any further comments or evidence for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint. ClearBank Ltd must pay Ms S £20,203.74. 8% simple interest should be added to this amount to be calculated between 12 August 2022 and the date of settlement.

If the £100 compensation referred to in ClearBank's complaint response hasn't already been paid, this too should be paid to Ms S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 8 January 2024.

Richard Annandale
Ombudsman