

The complaint

A company I'll refer to as E complains that Northern Bank Limited trading as Danske Bank (Danske) failed to prevent E from becoming a victim of fraud.

To put things right, E wants Danske to refund the £19,832.85 it lost.

E is represented by one of its directors, Mr G.

What happened

In short, E made a payment of £78,000 from its Danske bank account, after receiving an invoice it thought was from its supplier. Unfortunately, the invoice had been intercepted by a fraudster, who changed the account details to divert the funds. The key events happened all in the same day, so I've set out below what both parties have told our service.

What E has told us

In May 2019, Mr G agreed to buy a new car through E. On 27 May 2019, Mr G received a call from his local dealer to confirm the car had arrived and was ready for collection. Collection was agreed for midday on 28 May 2019 and the dealer said it would need the purchase price of £78,000 to be cleared in its account before collection. After the call, the dealer emailed an invoice to Mr G with its bank details for the payment.

E's daily single transaction limit was £25,000, so it needed to be temporarily lifted. Mr G's brother called Danske and was told he would need to go to branch to make the transfer. He did so and took a printed copy of the invoice with him, which the cashier took and gave to the branch manager. Mr G's brother was given a form to sign that was headed "Faster Payment/CHAPS/Bacs... Request Form".

The cashier returned shortly after and completed the transfer at 10:40am. Mr G's brother asked the cashier what time the funds would reach the destination account and was told it would be by the end of the day. Mr G says he now knows the payment was made by Faster Payment, which means it should arrive instantly.

Mr G arrived at the dealer at around midday to one o'clock, but was told the money hadn't arrived yet. Mr G soon became concerned that the funds hadn't arrived and called a Danske relationship manager (RM) at 14:03, asking for an urgent call back. He called again at 15:02, at which point the RM said the delay wasn't abnormal given the payment was made by CHAPS, but said he'd look into it. Mr G chased the RM again at 15:26 at which point the RM agreed to contact a few people to establish the cause of the delay.

At 15:51, the RM called Mr G and said the funds had definitely reached HSBC (i.e. the receiving bank). Mr G called the car dealer at 15:54 and says he became aware at 16:08 that the dealer did not bank with HSBC.

At 16:10, Mr G called the RM to confirm the problem, at which point Danske contacted the receiving bank to confirm the error and seek return of the funds. Danske was able to recover £58,167.15, which was returned to E. But the remaining £19,875.86 had been dispersed.

Mr G says he would have acted more quickly, had he been told the payment was made by Faster Payment and that it would therefore arrive instantly. He says Danske didn't take sufficient steps to protect E, and that Danske should have prevented the fraud.

What Danske has told us

Danske didn't accept responsibility for the lost funds. It said there was an onus on E to exercise caution when processing payments, and that E should have policies and procedures in place to ensure it doesn't become the victim of fraud in circumstances such as this.

Danske said E had failed to confirm the account details with the beneficiary on the phone, after receipt of the email. It said a Danske business manager had visited E in February 2019 to discuss payment limits as an action to prevent fraud, and that it was common practice to discuss this exact type of scam during such a visit.

Danske provided a booklet that outlined its customers' responsibilities. And noted that page 2 of the form completed in branch detailed a number of fraud warnings, that Mr G's brother didn't heed, including the following:

"You should always independently verify with the intended receiver that the account number and sort code are correct. This is vitally important if you have recently been advised of a change of account details."

Ultimately, Danske said it had no reason to suspect the transaction was fraudulent. And that responsibility for the fraud lies with E, because it failed to carry out due diligence checks and confirm the bank details were correct before making payment.

Our investigator upheld E's complaint. He said Danske had told Mr G's brother to expect the payment to arrive by the end of the day, but that the payment should in fact have credited the receiving account instantly. And that Mr G would have taken action sooner, had he been given the correct information on expected timings.

He thought the scam E had fallen victim to wasn't listed in Danske's literature, and thought the branch staff were better placed to prevent the scam than E. He said Danske should refund the sum of £19,832.85 plus interest at the rate associated with the account in question.

Danske didn't accept our investigator's findings, so it asked for an ombudsman to review the matter afresh.

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.

In broad terms, the starting position in law is that a bank 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 I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. And, in reaching my decision, I've taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time.

This is a finely poised case and I want to be clear that I've made this decision in light of the particular circumstances of this case. Danske says it had no reason to suspect the transaction would be fraudulent, and that E didn't undertake proper due diligence to protect itself i.e. that it didn't check the account details after receiving the email. However, having thought about the arguments and evidence both parties have submitted, I've reached the same outcome as the investigator, for broadly the same reasons.

The timeline I've set out above is important to this case. And in reaching my decision, I've assessed whether E acted reasonably in light of the circumstances of this case. Mr G says his brother was told to go into his local branch when he first called Danske to discuss the transfer. I don't have evidence to show what was said in that conversation, but I'm satisfied with Mr G's explanation and I haven't seen anything that would explain why Mr G's brother would attend branch, unless he had been told to do so.

At the same time Mr G's brother was told to go to branch, he was also told E's payment limit of £25,000 would have to be temporarily lifted. It's not clear to me exactly why Mr G's brother was told to go to branch, but given the nature of a transaction limit, I'm of the view that Mr G's brother (and Mr G) would have seen attending branch as a security measure on the part of the bank. And I'm satisfied they felt they were being guided by Danske, at least to some extent.

When Mr G's brother attended branch, he says he took the car invoice and bank details with him. He says he gave them to the cashier, who took them to the branch manager for approval given the size of the transfer (£78,000). Mr G's brother says he wasn't asked how he received those details, and that he was given a transaction form to sign.

Again, I haven't seen evidence of what was said at that meeting, so I've decided what I think is more likely than not to have happened, based on the information I have seen. And again, in the absence of evidence to the contrary, and because I find Mr G to be a credible witness, I accept Mr G's explanation.

Mr G's brother says he asked the cashier when the funds would arrive, and was told they would be with the recipient by the end of the day. This is important. The form Mr G's brother signed was headed "Faster Payment/CHAPS/Bacs Future Dated" and the form gave no further clues as to how the payment would be made. So, it wasn't clear to E from the form what type of payment it had instructed Danske to make. And I accept it was reasonable for Mr G's brother to rely on what he was told by the cashier.

The reason this is so significant is because of Mr G's actions after the transfer was instructed. It's often the case with scams such as this that they go undiscovered for several days. But, as I set out in the background above, Mr G was active in pursuing confirmation of the payment. Despite being told the transfer could take all day, Mr G chased Danske several times in the space of a few hours. And he acted instantly when he eventually discovered he'd used the wrong bank details.

Danske has since confirmed that the transfer was sent by Faster Payment. Danske says that, if the cashier did tell Mr G's brother the payment would arrive by the end of the day, that would be correct, regardless of whether the payment was made by CHAPS or Faster payment. It says *"a definitive timeline for the payment to reach its destination cannot be guaranteed via either method beyond the guarantee that the payment will be executed on the same day if received before 4.30pm"*.

However, I don't agree with the bank on this point. The Faster Payment website says:

"Provided the sending and receiving bank/building society are Direct Participants of Faster Payments, payments are usually available almost immediately, although they can sometimes take up to two hours.

These timescales can still apply if either the sending or receiving bank is not a Direct Participant of Faster Payments."

So, there are caveats to the time such a payment can take to arrive. But the headline here is that *"payments are usually available almost immediately"* and I'm satisfied that this is what most people reasonably expect when they instruct a Faster Payment. And more importantly, given Mr G's actions in chasing the payment so keenly when he thought it would go through by the end of the day, I take the view that he would have acted differently, had his brother been told that the payment was made by Faster Payment.

The transaction was incepted at 10:40 on the day in question. And the sum of £19,832.85 was dispersed by the fraudster at 14:15. For the reasons I've set out above, I'm satisfied Mr G would have questioned the payment more swiftly and more vigorously, when he arrived at the dealer, had his brother been told the payment was made by Faster Payment. And I'm satisfied that, had Mr G been aware of the correct payment type, the fraud would have come to light in the same (or similar) manner as it ultimately did, only before the funds were dispersed. Had that happened, the fraud could have been prevented.

I recognise what Danske says about Mr G failing to check the account details after receiving the invoice, particularly given E is a business customer. And Danske has referred to literature that outlines the danger of scams, as well as a meeting it says took place three months before E was scammed, in which it says E would have been reminded about common scams. And I agree that Mr G's brother attending branch didn't absolve E of its duties.

However, I'm satisfied Mr G and his brother acted in the manner I would expect to see of a reasonable person. This was a sophisticated scam. There was nothing unusual in the email and nothing that should, in these circumstances, have alerted Mr G to the fact he was being scammed. There were no typographical errors on the email or invoice, the email came in the name of the person Mr G had spoken to and included the car registration number. The only sign that the email wasn't right was that ".uk" was missing from the sender's email address. But I don't find that Mr G ought reasonably to have picked up on that one discrepancy.

And, while I note the form Mr G's brother signed contained a declaration that the account number and sort code had been checked, I'm not persuaded that it would be reasonable to deny E's claim in part or in whole on that basis.

As I've said above, I think Mr G's brother would reasonably have felt guided to at least some extent by Danske's actions. And although Mr G hadn't called the dealer after receipt of the email to check the details, the email came through shortly after Mr G had spoken to the dealer on the phone. So, he was expecting it and I don't think it was unreasonable to proceed without calling the dealer again.

The warning on the payment form does say *"You should always independently verify with the intended receiver that the account number and sort code are correct. This is vitally important if you have recently been advised of a change of account details."*

But I accept what our investigator said on this point: i.e. that this scenario emphasises the situation whereby account details have been *changed*, which wasn't the case here. And for the reasons I've set out above, Mr G had no reason to believe the account details were not accurate.

Danske has said that, if the cashier or manager asked Mr G's brother where he got the bank details from, he would have said "Mr G". But I don't accept that. In those circumstances, I would expect the cashier or manager to be seeking to ascertain the origin of the details, and not the 2nd link in the chain. So I think it's more likely than not that Mr G's brother would either have said how *Mr G* got the details, or that the cashier or manager would (and should) have asked for the origin, had Mr G's brother said what Danske suggested he would have said.

As I've said, Danske has made some reasonable arguments in response to E's claim. But, having thought about everything it's said, I think in this instance E was a victim of a sophisticated scam, and taking together all of the above, I don't think that E's actions can fairly be described as negligent. So, I am not persuaded that E should be asked to bear some liability.

To put things right, Danske must refund the money E lost, and pay interest on that sum from the date of the transaction to the date of payment.

My final decision

My final decision is that Northern Bank UK Limited t/a Danske Bank must pay E:

1. £19,832.85; and
2. Interest on the above sum at the rate of the account the money was in prior to the fraud, from 28 May 2019 to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 25 July 2022.

Alex Brooke-Smith
Ombudsman