

The complaint

Mr A complains ClearBank Limited hasn't protected him against fraud as it has allowed a scammer to open and operate an account into which he was tricked into transferring funds for what he believed was a legitimate purchase.

I understand the recipient account is operated through a platform provided by ClearBank's business partner under the Tide brand. But for ease of reading, I'll refer to ClearBank throughout, but where relevant the reference should be understood as meaning Tide.

What happened

The detailed circumstances of this complaint are well known to both parties, so I will not repeat them all again here. But I will provide an overview of the relevant events below.

Around October 2020, Mr A found a motorhome advertised for sale through an online marketplace. He contacted the seller and a purchase price of £6,000 was agreed. Mr A transferred the money from his bank account with 'C' to an account held with ClearBank. He says he was told by the seller that the payment was being made to a well-known payment processor's escrow service – where the money would be held until he'd received, inspected and agreed to keep the motorhome. When Mr A realised he might've fallen victim to a scam he called the shipping company who confirmed they would not hold money in the way that Mr A had been told. Mr A reported the matter to C, who notified ClearBank, but no funds remained to be returned.

Mr A complained about both ClearBank and C's actions.

C didn't uphold Mr A's complaint. It said that it had sufficient fraud prevention measures in place but that Mr A failed to carry out sufficient checks before making the payment. It said it had tried to recover Mr A's money from ClearBank, but no funds remained.

ClearBank also didn't uphold Mr A's complaint. It provided assurances that the matter had been handled appropriately and in line with all relevant procedures and that the necessary actions had been taken towards the reported account. However, due to privacy laws, it said, it couldn't provide Mr A with any additional information regarding the account itself or its investigation. It also explained an account holder can change their account name at any point (after application approval). And in these circumstances, it had carried out its due diligence appropriately and the recipient account had been opened correctly (and this was not in the well-known payment processor's name).

Both complaints were referred to our service – albeit one (complaint against C) before the other (complaint against ClearBank).

One of our Investigator's initially upheld Mr A's complaint against C in full. C disagreed and asked that the complaint be reconsidered by an Ombudsman. A determination about Mr A's complaint against C was made by another Ombudsman. He concluded Mr A should receive 50% of his loss under the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code (which C is a signatory of) because it had failed to provide an effective warning to Mr A, but he also lacked a reasonable basis for belief in making the payment.

Following this, one of our Investigator's considered Mr A's complaint against ClearBank. She explained that Mr A was an eligible complainant under DISP 2.7.6R(2B) and our service could look into his complaint. She concluded that whilst ClearBank hadn't failed in its due diligence when opening the account – and couldn't have prevented Mr A's loss in this way. It ought to have done more and could have prevented his loss had it acted promptly upon notification (relating to another payment) that it had received prior to Mr A's funds being spent. But she thought Mr A's negligence had also contributed to his loss, so what was fair in all the circumstances was that he bears equal responsibility for the loss which he has suffered. And since Mr A had already received 50% of his loss from C, she didn't think ClearBank needed to pay anything further.

Mr A disagreed and asked for his complaint to be reconsidered. Ultimately, he didn't think it was right that he only recovers half of his loss and ClearBank has nothing to pay despite it failing to protect his money by not checking that the account holder's name matched on receipt of payment; and allowing his money to be spent when it was already on notice that the account was being used fraudulently.

On 9 March 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 intend on upholding this complaint in part. I'll explain why. Firstly, Mr A has received half of his total loss from C (his own bank), under the CRM code to which it (not ClearBank) is subscribed. So my consideration here is limited to making a determination about ClearBank's acts or omissions relating to Mr A's remaining loss of £3,000.

I think it would be helpful for me to set out that where an account is found to have received funds as a result of a scam, this doesn't automatically entitle the victim who was tricked into sending funds to that account to a refund from the bank with which that account is held. Nor in these circumstances is there the option of a higher sum of reimbursement under the CRM code as ClearBank are not a signatory of it. So my considerations here are limited to deciding whether I can reasonably conclude that ClearBank failed to prevent Mr A's outstanding loss or did something wrong where it would be fair to ask it to provide a refund.

I agree with our Investigator that ClearBank correctly followed its account opening procedures, carried out checks to verify the identity of the named account holder and did its due diligence when opening its customer's account (the recipient account). There wasn't anything at the time that I think reasonably could've alerted ClearBank that the account it was opening would later be used fraudulently. So I'm satisfied it didn't miss an opportunity to prevent Mr A's loss when opening the account.

Mr A says the named payee on his payment instruction was a well-known payment processor and this is who the payment was meant for – not the recipient accountholder who according to ClearBank was someone different. Based on this I can, of course, see why he feels that Clearbank missed an opportunity to prevent his loss by failing to check that the named payee on the payment instruction matched the accountholder's name when processing the payment. But at the time the payment was made, the checking of the name given on the payment instruction against the name of the recipient accountholder was commonly not part of the payment process. To explain further, generally, the key information used by banks to route a payment is a "unique identifier".

This is defined in the Payment Services Regulations 2017 (the PSRs) as:

"... "unique identifier" means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user in relation to a payment transaction in order to identify unambiguously one or both of — (a) another payment service user who is a party to the payment transaction; (b) the other payment service user's payment account".

For UK payments this is typically the account number and sort code. If the funds are credited to the specified account number and sort-code (or IBAN) the payment is considered to have been executed correctly. So for these reasons, I can't fairly say, that ClearBank did anything wrong by not checking whether the payee name provided as part of the overall payment instruction matched that of the named accountholder at the time of processing the payment.

But regulated financial businesses such as ClearBank have a general duty and ongoing obligations to ensure they have systems and processes in place to monitor their customer relationships and prevent financial fraud. I agree with ClearBank that these obligations might not look the same for all financial businesses. But I haven't seen anything that persuades me that ClearBank (as it has suggested) at the time of Mr A's payment (October 2020) didn't have obligations to ensure it had adequate account monitoring systems in place. So having looked at the activity on the recipient account since it was opened, I think it is reasonable to have expected ClearBank to have had concerns about the activity on the recipient account before Mr A's funds were paid away. And based on these, I think an appropriate step would've been to block and investigate the use of its customer's account. Had ClearBank done so, I'm persuaded that all of Mr A's money would have remained available for recovery.

I say this because the recipient account was newly opened, and these types of accounts do present a greater risk of being used in connection with fraud and scams. ClearBank would have also seen that the account activity followed a known fraudulent pattern – credits received (with beneficiary name mismatches) quickly being dispersed. And that the activity observed was not consistent with the accounts expected use, based on what ClearBank knew about its customer. I do note that ClearBank tried to contact its customer (after it had received notification of fraud) – and they did not respond. So I think it's most likely that ClearBank would have received a similar response if it had tried to contact its customer at an earlier point. And shortly after this point it would've started to receive reports of fraud from the remitting banks.

I appreciate at the point at which ClearBank blocked the account there were minimal funds remaining (under £10). So I've thought about whether more money being available in the account at an earlier point of intervention would've been a motivating factor that would've resulted in the recipient account holder responding to ClearBank's enquiries. But I'm more persuaded by what did happen and on balance think it's most likely ClearBank's customer would not have responded. And even if I were wrong about this, I'm still not convinced it makes a difference as I don't think the recipient account holder would have been able to provide a plausible and persuasive explanation of (or evidence to support) the observed account activity.

I know there is some disagreement about whether it is reasonable to have expected ClearBank to have taken as long as it did to respond to the notification it received before Mr A's funds were spent. Our Investigator was of the view (which was shared by Mr A) that ClearBank ought to have blocked the account sooner than it did and this would've prevented Mr A's loss. ClearBank disagrees. It explained the report was received out of hours and at the relevant time its operational capabilities meant that the earliest this would've been picked up was the following morning. I think it's reasonable that the size and capability of a financial business is taken into account when considering what a reasonable expectation is with regard to how quickly it can act. And while I do think ClearBank ought to have acted sooner than it did (which was two days after the receipt of the report). In these specific circumstances, the earliest I could reasonably expect it to have reacted to the fraud report is the following morning, by which point none of Mr A's funds remained in any case.

I know Mr A feels strongly about this and naturally will be disappointed with what I've concluded. It's not that I disagree with him that restricting money leaving a recipient account in a speedy manner is critical to supporting the return of monies to the payer, but as I've said above, I must also have regard for the size and capability of each financial business and what can reasonably be expected. However, my findings in relation to this aspect of Mr A's complaint do not change that for different reasons which I've explained above, I still think ClearBank could have prevented Mr A's outstanding loss.

Taking all the above together, I think that there has been a failure by ClearBank which has resulted in a loss to Mr A. So it follows that it would not be unreasonable to ask ClearBank to refund the loss it could have prevented – which is Mr A's total outstanding loss of £3,000.

I know Mr A thinks he ought to receive this in full irrespective of his actions. But I don't agree. My role is to decide what's fair and reasonable in all the circumstances and if Mr A's actions contributed to the outstanding loss, I think it would be fair for him to bear part of that loss, given he was partially responsible for the fact he has suffered it. Ultimately, the amount of redress awarded against ClearBank needs to be fair.

This brings me to my next consideration, which is to decide what proportion (if at all) of the £3,000 Mr A should bear. Having considered Mr A's actions I consider it fair and reasonable to say a 50% reduction is appropriate as I'm satisfied that Mr A's conduct played an equal role in causing the £3,000 outstanding loss.

I've reached this conclusion because initially Mr A wasn't comfortable with the methods of purchasing the motorhome the seller had proposed. He decided not to go ahead with the purchase. I don't think it's unreasonable to say that a motorhome priced so competitively ought to have been snapped up relatively quickly. So I think when Mr A approached the seller again, it still being available and the seller's willingness to reduce the price further for a motorhome which was already priced significantly lower than it ought to have been should have raised alarm bells. I would've expected this to put Mr A on guard, and I'm persuaded it did as Mr A asked the seller for photographic identification; allegedly took steps to independently contact the payment processor to confirm the legitimacy of the transaction; took photographs of the 'live chat' conversation; and sought reassurance from C before making the payment. Based on this it is my opinion that Mr A's actions surpassed those of a cautious buyer and surmounted to someone with serious reservations about the legitimacy of the seller who, ultimately, decided to proceed with the payment.

Mr A argues he hasn't been negligent. He says he couldn't travel to see the motorhome before purchasing it due to the pandemic and it was his honest belief that he was communicating with the genuine payment processor, and he was reassured by the response he'd received. I've thought about what Mr A says but not seeing the motorhome before making the payment is not the basis upon which I think a reduction in award should be made. And I agree with my colleague Ombudsman's findings on the linked complaint that Mr A hadn't taken the very steps he knew he ought to in order to protect himself, and that his belief that he was talking to the payment processor was not reasonable because in short, the evidence suggests, it was most likely that Mr A had clicked on a link in the seller's email – and not visited the payment processor's site directly and independently as he claimed, and knew he ought to have done.

Finally, I've thought about whether interest should be payable on the financial award I intend on making. Mr A says he'd borrowed the money he paid to ClearBank's accountholder's account from his parents. He confirmed that he is only obligated to repay the principal amount of the loan. He provided evidence of the interest his parents have lost out on as a result of being without the money since the scam. However, as Mr A is the eligible complainant I can only award Mr A's losses, not those of his parents. However, I have seen, in Mr A's submissions, comments which suggest he was paying his parents back in small monthly payments. So if Mr A has paid these funds back, on the provision that he can provide evidence of the dates and the amounts he paid back to his parents, I think it's fair to conclude that he's been deprived the use of those funds. So ClearBank should pay interest at 8% simple per annum from the date those funds were repaid by Mr A to his parents to the date of settlement. And in the absence of any evidence and/or if these haven't been repaid then I think it wouldn't be fair to award interest.

My provisional decision

For the reasons outlined above, but subject to any further information I receive from either Mr A or ClearBank Limited I'm intending to uphold this complaint in part.

I intend on directing ClearBank Limited to pay Mr A:

- £1,500 (this represents his outstanding loss of £3,000, less a 50% reduction for Mr A's contributory negligence).*
- 8% simple interest per annum as detailed above upon receipt of evidence from Mr A of these funds being repaid to his parents."*

ClearBank did not respond to my provisional decision.

Mr A did respond. He said that regardless of my opinion on whether the purchase was too good to be true, ClearBank ought to have taken action sooner. And had it done, he wouldn't have suffered a loss. He reiterated that he'd done his checks, but if 50% is the best that he can get then he would have to accept that decision.

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 has provided any new evidence or comments for me to consider, I see no reason to deviate from the outcome I reached in my provisional decision.

My final decision

My final decision is that I uphold this complaint.

To put things right ClearBank Limited must pay Mr A:

- £1,500 (this represents his outstanding loss of £3,000, less a 50% reduction for Mr A's contributory negligence).
- 8% simple interest per annum as detailed above upon receipt of evidence from Mr A of these funds being repaid to his parents.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 April 2023.

Sonal Matharu
Ombudsman