

## The complaint

Miss G complains Clydesdale Bank Plc didn't do enough to protect her from losing over £21,000 to an investment scam.

## What happened

Miss G has explained that in 2021 she made the following payments to Binance from her Clydesdale account, using her debit card, to fund what she thought was a legitimate investment with Malaikah Raja/Rod Market.

Transaction number	Date	Merchant	Amount (£)
1	04 May 2021	Binance	1,856
2	04 May 2021	Binance	10,000
3	05 May 2021	Binance	8,900
4	12 May 2021	Binance	310
<b>Total</b>			<b>21,066</b>

When Miss G subsequently got in touch with Clydesdale to explain she'd been scammed, Clydesdale didn't reimburse Miss G's lost funds. Remaining unhappy, Miss G referred her complaint about Clydesdale to this service. As our investigator (who did not recommend that the complaint be upheld) couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent Miss G and Clydesdale my provisional decision in November 2022 explaining why I was minded to partially uphold this complaint and the redress I considered appropriate. Now that both parties have replied to my provisional decision, and I've had the opportunity to review the case again, including the responses to my provisional decision, I'm now ready to explain my final 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.

Miss G has made detailed submissions in relation to her complaint. I've read and considered everything that she's sent in. But I won't be responding in similar detail. So if I don't mention a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

I've reached the same conclusions as explained in my provisional decision, and for materially the same reasons. I've explained my reasons again below.

## Recovery

After the payments were made, I couldn't reasonably expect Clydesdale to have done anything further until Miss G notified it of the scam. Then, because these were debit card payments, the only potential avenue for potential recovery of the payments would have been through the chargeback scheme.

However, Miss G made the payments from her Clydesdale debit card to Binance (and not directly to Malaikah Raja/Rod Market). This means the merchant here, for chargeback purposes, was Binance (and not Malaikah Raja/Rod Market). Binance legitimately provided the services intended (which was the purchase of cryptocurrency and then moving it onto the wallet of her choosing). The subsequent transfer of the cryptocurrency onto Malaikah Raja/Rod Market would not give rise to a valid chargeback claim through Clydesdale. So I don't think these payments were recoverable through Clydesdale once they had been made.

## Prevention

Having decided the above, I can only uphold this complaint if I think Clydesdale reasonably ought to have prevented some or all of Miss G's payments to Binance in the first place – therefore preventing her loss or part of it.

It's common ground that Miss G authorised the scam payments in question here. She was tricked by the scammer into instructing Clydesdale to make the payments. I accept these were 'authorised payments' even though Miss G was tricked. So although she didn't intend the money to go to a scammer, Miss G is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Clydesdale should fairly and reasonably:

- Have been monitoring accounts – and any payments made or received – to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

Now here, I'm satisfied from the evidence I've seen that Clydesdale's systems *were* triggered before Miss G's first payment (set out above) was sent; and that Clydesdale *did* interact with Miss G at this point before it allowed the payments through.

I'm satisfied, therefore, that the material questions here then – the questions the outcome of this complaints turns on – are (1) did Clydesdale discuss Miss G's payment instructions *appropriately* with her before allowing them through – and, if Clydesdale didn't do that, (2) would Miss G's loss most likely have been prevented if Clydesdale had instead done so.

*Did Clydesdale appropriately discuss the payments before it allowed them through?*

I'm not persuaded by the evidence I've seen that I can say Clydesdale did discuss the payment instructions with Miss G in a way I would reasonably expect.

Given the nature of the payments, and the fact that Clydesdale's system was triggered, in a situation like this, in order to meet its obligations summarised above, Clydesdale reasonably ought to have spoken with Miss G to check everything was in order before it processed the payments, to protect her from the possibility of financial harm. And during such a conversation with Miss G, I would reasonably expect Clydesdale to have asked who the payment was for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam. I don't think such a conversation ought to have stopped on the basis that the money was going to Binance, a legitimate crypto exchange – because by January 2019 (over two years previously) Clydesdale had or ought to have had a good enough understanding of how scams like these work – with the victim sending money to a crypto exchange before it is transferred onto the scammer.

*Would Miss G's loss most likely have been prevented if Clydesdale had appropriately discussed the payments with Miss G before it allowed them through?*

I don't think I can reasonably say Clydesdale ought to be held responsible for the loss of the first payment because, after all, this payment was for a relatively modest amount. And there is a balance to be struck. Banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests. But they can't reasonably be involved in every transaction.

I do think, however, that if Clydesdale had appropriately discussed payment two with Miss G, before it allowed it through – as I think it reasonably ought to have done – this would have made a difference. I say this because I can see from Clydesdale's records that there is a note dated just the day after (on 5 May 2021) that Miss G asked Clydesdale whether she would be protected by chargeback if she was being scammed. I think it's fair to say she was most likely already having some doubts. And I think Clydesdale, if appropriate after referring internally for advice, really ought to have been able to impress upon Miss G the very high risk she was being scammed and the reasons why (bearing in mind the knowledge and awareness I would expect Clydesdale to have about scams like this by 2021). And I think if Clydesdale had done this in the way I'd reasonably expect it to have, it's most likely Miss G would have then realised the risk of continuing with the payments was too high to accept.

It follows that I think Miss G wouldn't then have proceeded with payment two, nor payments three and four.

I've thought about whether Miss G should bear some responsibility for this loss by way of contributory negligence (which might justify a reduction in compensation). I don't think it's unfair to say Miss G really wasn't as careful with these payments as she reasonably ought to have been. She did undertake some previous due diligence. But as early as the day after payment two, she asked Clydesdale whether she'd be protected by chargeback. And I think it's fair to say, she reasonably ought to have had some concerns already – but she proceeded anyway. I'm satisfied in these circumstances that there should be a 50% reduction to the compensation payable for the loss of payments two to four, to reflect Miss G's contribution to the loss of those payments.

## **Putting things right**

It follows that I think Clydesdale should pay Miss G £9,605 (50% of payments two to four). It should also pay Miss G interest on that amount from the date of loss to the date of settlement calculated at 8% simple per year, to compensate Miss G for the period she has been deprived of this money.

I understand the experience has caused Miss G distress and inconvenience. And I am naturally sympathetic in cases like this where someone is cruelly scammed out of money, and there is an emotional impact too. However, I am mindful that Clydesdale has already paid Miss G £60 compensation for service issues. And I am mindful that the scammer was ultimately the root cause here. And whilst I have concluded Clydesdale most likely could have prevented payments two to four, as I've explained I also think a 50% reduction to the compensation due to contributory negligence is appropriate. Bearing all of this in mind, overall I'm satisfied the award I have set out here represents a fair outcome to this case, so I don't make an additional award for distress and inconvenience.

## **My final decision**

For the reasons I've explained, I partially uphold this complaint and I direct Clydesdale Bank Plc to pay Miss G £9,605 plus interest calculated at 8% simple per year from the date of loss to the date of settlement. If Clydesdale deducts tax in relation to the interest element of the award, it should provide Miss G with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 21 February 2023.

Neil Bridge  
**Ombudsman**