

The complaint

Mr G as a director of C, a limited company, complains that ClearBank Limited ("ClearBank") won't refund money C lost after falling victim to a scam.

What happened

Mr G says C's account was set up with the purpose of purchasing buy-to-let properties. In October 2021, C was purchasing a new property. They had instructed a firm of solicitors and had been dealing with a staff member from that firm, who I'll refer to as S, via email.

In October 2021, Mr G received an email from S asking them to make a payment of £39,500 towards the property purchase. The email had been intercepted and came from a fraudster, not the genuine firm. The email continued on in an email chain from previous genuine emails however the email address was slightly different, and the fraudster changed the contact phone number in the footer. Mr G was given the bank details for accounts controlled by the fraudster rather than the genuine solicitor's bank details.

Mr G attempted to make the payment on 20 October 2021, but the payment bounced and was immediately credited back to C's account. Mr G attempted to make the payment four times on the 20 October 2021 and once on 21 October 2021 – with all of the payments bouncing back into C's account. He then attempted to make a smaller payment of £10,000 (on 21 October), which also bounced, before using new account details provided by the fraudster and successfully making the full payment of £39,500.

During the failed payment attempts Mr G got in touch with ClearBank through their in-app chat to find out why the payment wasn't going through. ClearBank told Mr G that the first payment attempt hadn't gone through as he'd recently received funds into C's account and there had been a communication error between their systems. They suggested Mr G wait for 20 minutes then attempt the payment again. When the payment failed a second time, ClearBank suggested Mr G check the recipient account details were correct and also clear the app's cache.

ClearBank escalated Mr G's payment issue to an internal team when it continued to bounce back to C's account. Following that review, ClearBank told Mr G that the issue might be caused due to the recipient having a limit on their bank account. They suggested Mr G contact the recipient and get them to check on their end. Mr G responded to ClearBank that he had contacted the recipient and the problem didn't lie with them. The chat ended after Mr G was able to make the payment successfully, by making the payment to different bank account details provided by the fraudster.

In January 2022, the genuine solicitor's firm got in touch with Mr G and asked him to make the payment. At this point Mr G became aware he'd been the victim of a scam and reported it to ClearBank.

ClearBank investigated C's fraud claim and issued a final response letter saying they upheld C's complaint. As a result of the letter, Mr G expected a full refund which he chased with ClearBank. In response, ClearBank clarified that as no funds could be recovered from the

beneficiary account, C wasn't entitled to a refund. They told Mr G that C would only have been entitled to a refund of any recovered funds.

Mr G wasn't happy with ClearBank's response, so he brought a complaint to this service on C's behalf.

An investigator looked into C's complaint and didn't recommend ClearBank refund C's loss saying:

- The payment didn't trigger because of potential fraud concerns, it was due to issues with the recipient's bank account.
- While Mr G attempted to make the payment multiple times, they wouldn't have expected ClearBank to identify a fraud risk based on the previous account usage.
- There wasn't anything said during the in-app chat with Mr G that should've concerned ClearBank that he might've been the victim of a scam.
- We can't make an award for any distress Mr G suffered as the complaint is being brought on behalf of C, and a business can't experience distress.

The investigator felt ClearBank had caused confusion in the way they worded their final response letter by telling C they were upholding the complaint, which resulted in Mr G chasing ClearBank for a refund. Because of that, the investigator recommended that ClearBank pay C £150 for the inconvenience caused.

Mr G disagreed with the investigator's opinion, highlighting wording in the final response letter where ClearBank said they should've asked additional questions about the nature of the payment and that they hadn't done their due diligence. Mr G feels that as ClearBank have admitted fault, they should be held accountable. He also felt the number of times the payment bounced should've looked suspicious to ClearBank and triggered their fraud system.

As the case couldn't be resolved it was passed to me to review.

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.

The starting position is that ClearBank are expected to process payments and withdrawals that its customers authorise, in accordance with the Payment Service Regulations and the terms and conditions of the customer's account. So, when ClearBank made the payment, it was complying with Mr G's instructions made on behalf of C.

ClearBank aren't a signatory to the Contingent Reimbursement Model Code, so I can't apply it to the payment C made. However, ClearBank have a duty of care to their customers to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams.

Having carefully considered all the evidence, I'm not satisfied that I can fairly hold ClearBank liable for C's loss and I'll explain why.

While C's payment to the fraudster was attempted several times, the reason the payment didn't go through was due to issues with the recipient bank – rather than due to ClearBank's system identifying it as potential fraud. Having reviewed C's previous account use, I can see they regularly made large one-off payments in the months prior to the payment to the

fraudster, which is in line with what Mr G has told us about the account being used to purchase buy-to-let properties. Also, while the payment was initially made to a new payee, the subsequent attempted payments went to the same payee. As opposed to payments made to multiple different payees, which may've been more suspicious. I realise that Mr G ended up setting up two new payees on two consecutive days, but I'm not satisfied that by itself should've been concerning for Clearbank. Having considered all the features of the payment that C was attempting to make against the previous use of the account and the reason that the payment was unsuccessful, I'm not satisfied that I can fairly say ClearBank should've identified a potential indicator of fraud and intervened on that basis.

I've also read the in-app chat that Mr G had with ClearBank and I'm not satisfied that there is anything in that chat that should've concerned ClearBank or prompted them to ask more questions before processing the payment. Mr G didn't voice any concerns that may've indicated he was at risk of financial harm, and from what I've seen the information ClearBank had suggested that the issue lay with the recipient's account. There wasn't anything that suggested that the recipient's account was fraudulent, rather it appeared that ClearBank thought the account may've been limited. They suggested that Mr G check the account details he was using were correct, and also asked him to check with the recipient to see if their account may've been limited. I think the guidance ClearBank provided to Mr G was appropriate based on the information they had at the time.

Also, I'm conscious that ClearBank is considered a payment institute so the obligations on them are slightly different than those on a "traditional" bank – which I've taken into consideration along with industry standards at the time Mr G made the payment. And, having carefully considered all of the evidence, including the points raised by Mr G in response to the investigator's opinion – I'm not satisfied that I can fairly ask ClearBank to refund C.

An award for the poor service C received

I agree that ClearBank caused confusion by telling C it was upholding their complaint, when in fact they only intended to refund C any money that could be recovered from the beneficiary bank. On that basis, I think the £150 recommended by the investigator is fair for the poor service C received. As the investigator explained, I can't make an award against ClearBank for distress experienced by Mr G, as he is only bringing the complaint on behalf of C and a business can't experience distress.

I realise that Mr G is going to be very disappointed and that this represents a lot of money to C, but I can't fairly ask ClearBank to fund C for their loss and will only be asking ClearBank to pay £150 for the poor customer service C experienced.

Putting things right

To put things right ClearBank Limited should pay C £150 for the poor service they provided.

My final decision

My final decision is that I partially uphold this complaint against ClearBank Limited and require them to compensate C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 9 June 2023.

Lisa Lowe
Ombudsman

