

## **The complaint**

Mr M is a sole trader, trading as H. He complains that ClearBank Limited won't refund payments he didn't make.

ClearBank partners with Tide to provide accounts for its customers. For ease, I've generally referred to ClearBank throughout the decision as it's ultimately responsible for the complaint.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for my 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.

Having done so, I've reached the same outcome as our investigator for these reasons:

- ClearBank has seemingly accepted these disputed payments were unauthorised. I agree. It's clear Mr M didn't go through the agreed steps to consent to these payments using Apple Pay, which is what's needed to regard a payment as authorised in line with the Payment Services Regulations 2017 (PSRs). Instead, he was tricked into completing the process to load his card on to someone else's device – and they made the payments.
- However, ClearBank has submitted that Mr M failed with gross negligence to comply with the terms of the account and keep his personalised security details safe. So it doesn't think it should refund the unauthorised payments, in line with the PSRs.
- Having considered the circumstances carefully, I'm not persuaded ClearBank has shown that's the case. I'll explain why.
- Mr M received a call from a private number from someone pretending to be from Tide. They'd personal information about him and said his details may have been compromised from using a certain delivery company, which he had used that week. In these circumstances, I can see how Mr M trusted the caller was from Tide. I think lots of people would've done.
- The caller explained there had been suspicious activity on his account and to sort this out, they'd need to verify it was Mr M by asking him to share a code they'd send to him by text.
- Mr M said he was panicked at the time by what he'd been told and was struggling to use his phone while he was still on the call. So he focussed on this code and shared it. He said he was also reassured by the timing and sender of the message – he

believed he was talking to Tide, and when he was told to expect it, a message came through from them.

- I accept the message contains a warning and refers to setting up Apple Pay. But I can also understand how Mr M didn't read this in full when he was panicked – particularly given how the code is in a different colour and underlined in the message. Adding to the mix the timing of the message and his trust in the caller, I'm not convinced that he acted with very significant carelessness to conclude he failed with gross negligence.
- ClearBank submits that Mr M ought to have been concerned that the message mentioned Apple Pay when he uses an Android phone. But the point is that Mr M didn't recognise he was adding his card to any device (Apple or otherwise) because he didn't read the message in full. I've already explained why I don't think that meant he failed with gross negligence, so this doesn't change my mind.
- ClearBank has also referred to how Mr M breached their terms and conditions by sharing the code. But the test I'm considering is whether he failed with *gross negligence* to comply with the terms of the account. So it's not enough to say he breached them.
- It's also highlighted how Mr M didn't act as a reasonable person. That might be the case. But I'm considering whether his actions fell *so far below* what a reasonable person would've done to amount to *gross negligence*. I don't think that's the case.
- Finally, ClearBank submitted that Mr M ought to have known it wouldn't send a code to verify his identity – and that it's widely understood it's for authenticating payments. Firstly, this wasn't to authenticate a payment – it was to complete the steps to set up Apple Pay. And while ClearBank are understandably familiar with its security processes, that doesn't mean I'd expect Mr M to be in the heat of the moment. Particularly when codes like this are used by various organisations for various purposes, including for verifying someone's identity.
- This was clearly a planned and cleverly designed scam, where fraudsters socially engineered Mr M into providing a code so they could exploit the card details they'd already stolen. From ClearBank's response, it seems Mr M isn't the only customer that's been a victim of this.
- Taking this all into account, I don't think ClearBank has shown Mr M failed with gross negligence. So I conclude that he isn't liable for the disputed payments and ClearBank needs to put things right – by refunding his losses from these payments alongside interest to compensate him for the time he's been out of pocket.
- I've also considered Mr M's non-financial losses. I understand that ClearBank has already paid him £100 to reflect its handling of the matter, which I think is a fair reflection of the impact this had on him. So I haven't made a further award.

### **My final decision**

For the reasons I've explained, I uphold Mr M's complaint. ClearBank Limited must:

- Pay Mr M the total of the unauthorised payments, less any amount recovered or already refunded.

- Pay 8% simple interest per year on this amount, from the date of the unauthorised payments to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 July 2023.

Emma Szkolar  
**Ombudsman**