

The complaint

A company, which I'll refer to as J complains that ClearBank Limited won't refund payments it didn't make

Mr K, who is a director of J, brings the complaint on J's behalf.

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:

- In line with the Payment Services Regulations 2017 (PSRs), the starting position is that ClearBank is liable to refund payments J didn't authorise.
- ClearBank has seemingly accepted these disputed payments were unauthorised. I agree. It's clear Mr K 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 PSRs. Instead, he was tricked into completing the process to load his card on to someone else's device – and they made the payments.
- Under the PSRs, ClearBank can refuse to refund J if it can show that J failed with gross negligence to comply with the terms of the account and keep its personalised security details safe.
- It's unclear if that's what ClearBank is alleging. In its response to J's complaint, it said it found Mr K's thoughts and explanations to be reasonable. But it only offered to refund half the money lost. In response to our investigator's view that J should be refunded in full, it said it was clear from the message sent to Mr K with the one-time passcode that it was to add J's card to Apple Pay and that he shouldn't share it. It added that Mr K ought to have known the steps for removing a card from Apple Pay, and that it doesn't need a one-time passcode.
- I'm not persuaded these points demonstrate that Mr K failed with gross negligence. Or, in other words, that he acted with very significant carelessness; seriously disregarded an obvious risk; or fell so far below what a reasonable person would've done.

- In saying that, I've considered Mr K's understandable belief he was talking with someone from Tide, given the information they knew about him and the spoofed texts they sent that appeared to come from Tide. I think lots of people would've trusted the caller in these circumstances.
- I accept that, if Mr K had taken in the entirety of the message, he might have questioned sharing the code. But I'm mindful it's easy to be critical of someone's actions with the benefit of hindsight. Here, Mr K said he focused on the code to share. He explained he'd been told they needed to stop a large payment on the account, and they needed the code to remove Apple Pay from a fraudulent device. So he was understandably panicked and acted in the heat of the moment. 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.
- Considering these circumstances, I can see how he didn't read the message in full and instead focussed on the code he believed would protect J's account from fraud. In saying that, I note how the code appeared underlined on his phone – making it easier to share without reading the context. It follows that I don't think he acted with very significant carelessness to conclude he failed with gross negligence.
- ClearBank also suggested he ought to have known the process for removing a card from Apple Pay. Firstly, the process it's referenced is how to remove it from your own device, not someone else's as was the scenario falsely presented here. And either way, I wouldn't expect someone to remember technical processes in the heat of the moment – so they could immediately question what they're being asked to do. Again, I think this is using the benefit of hindsight to challenge Mr K's actions.
- Taking this all into account, I don't think ClearBank has shown Mr K failed with gross negligence. So I conclude that J isn't liable for the disputed payments and ClearBank needs to put things right – by refunding J's losses from these payments alongside interest to compensate it for the time it's been out of pocket.
- I've also considered J's non-financial losses. ClearBank ought to have refunded this much sooner. And while a limited company can't suffer distress, it can be inconvenienced and its reputation can be damaged. Here, the unresolved matter meant J struggled to pay staff and its bills. So I also award £100 to reflect this.

My final decision

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

- Pay J 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).
- Pay J £100 for its inconvenience.

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

Emma Szkolar

Ombudsman