

The complaint

K is a small business which holds a current account with ClearBank Limited. K was the victim of a fraud whereby money was taken from its ClearBank account. It wants ClearBank to refund the money it lost.

(K's account is operated through an IT platform provided by ClearBank's business partner with the brand name "*Tide*". However, as ClearBank provided the account at the centre of this complaint, I have only used its name throughout this decision).

What happened

The basic facts which led to this complaint are not in dispute. An outline follows.

As well as K's account with ClearBank, it held accounts with several other banks and financial organisations. In April 2022, the fraudster sent a text message to a mobile phone belonging to K. The message asked K to click a link to pay a small extra fee for a delivery. This seems to have allowed the fraudster to obtain some information about some of K's accounts.

The next day, the fraudster rang K on the mobile phone pretending to be from one of the other financial organisations. The fraudster told K that (other) fraudsters had hacked into its account with ClearBank and that K should move money to other accounts which it described as "*safe*".

K then made three large payments to the accounts the fraudster specified. K used ClearBank's *faster payment* service to transfer the money. Within 80 minutes, it transferred the following sums:

- £15,001 to receiving bank one. (The first payment).
- £10,000 to receiving bank one. (The second payment).
- £6,140 to receiving bank two. (The third payment).

(I have rounded all monetary amounts to the nearest pound).

The first and second payments were to new accounts. The third was to an existing account which K already held in its own name. At the fraudster's request, K then transferred the money from receiving bank two into another account it held with another bank and then into a cryptocurrency.

About four hours after K had made the third payment, it realised it had probably been a victim of fraud and reported the first two payments to ClearBank. As it held the relevant account for the third payment, it contacted receiving bank two directly.

Two days later, after some further contact between ClearBank and K, ClearBank tried to recover the first and second payments from receiving bank one. Receiving bank one said

that the money had already been moved on and there was nothing left for ClearBank to recover.

K did not hear anything from receiving bank two. So, four days after K had made the payments, ClearBank contacted receiving bank two to try to recover K's money from the third payment. After around two months, it recovered a small amount, around £15, which I believe has since been refunded to K. I'm not sure if ClearBank or receiving bank two arranged this refund, but this is not particularly significant to the outcome of this complaint.

K thinks that ClearBank should have noticed that all three payments were possibly fraudulent and stopped them, and that after it failed to do so, it should have acted more quickly to recover the money from the receiving banks. It wants ClearBank to refund all the money it has lost, a total of around £31,141.

ClearBank does not think there was anything unusual about the three payments that suggested they were fraudulent and that it had no grounds to stop them or ask K about them. It accepts it should have tried to recover the money more quickly after K reported the fraud. But it has said that by this time the fraudster had moved all the money away from receiving bank one and almost all of it from receiving bank two, so it was already too late. It has, however, offered £75 to K as compensation for any inconvenience caused by this delay.

One of our investigators has already looked into K's complaint and thought that ClearBank should have spotted that all three payments looked fraudulent and should have contacted K to check if it wanted to proceed. The investigator thought that if ClearBank had done this, K would have withdrawn its authority for the payments. However, the investigator didn't think that ClearBank was wholly responsible for K's loss from payment three.

The investigator recommended that ClearBank should refund K all the money from payments one and two and half of the money from payment three, plus 8% simple interest from the date of the fraudulent payment until the date it makes the refund. The investigator also thought that ClearBank had handled K's complaint poorly and should pay an additional £200 for distress and inconvenience.

ClearBank did not accept the investigator's recommendations and asked for the complaint to be reviewed by an ombudsman. So, it has come to me to make a 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.

The crux of K's complaint is that it believes ClearBank should have spotted the three payments were fraudulent and that as it didn't, it should refund the money K has lost.

In broad terms, the starting position in law for case like this is that firms are expected to process the payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider was good industry practice at the time, I consider Clearbank 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 that its customers were at risk of fraud (among other things).

When K made the three payments, it followed ClearBank's procedure for online banking. By doing so, it effectively instructed ClearBank to move the money. I fully accept that it only did this because of the actions of the fraudster, but it effectively authorised ClearBank to make the payments. Frauds of this type are often called *Authorised Push Payment (APP)* frauds.

It seems to me that the value of each payment was noticeably larger than K usually made from its ClearBank account. They were the largest for at least twelve months. And K had not made any previous payments to the account the fraudsters identified at receiving bank one. So, I think that ClearBank should have questioned all three payments with K before processing them. ClearBank didn't do this. It has made several points to explain why it didn't. Amongst other things it has said:

- For payments one and two, its automated system generated a check called *Confirmation of Payee (COP)* which alerted K that the name on the account at receiving bank one didn't match the sort code and account number. It has said that this should have been sufficient to alert K that something was wrong and that as K went ahead anyway, K was responsible for the loss.
- K had made large payments in the past from its account and such payments are common for business accounts. It doesn't think there was anything unusual about any of the three payments.
- At the time the payments took place, K was on the phone to the fraudster so wouldn't have been able to answer a call from ClearBank, so there would have been no point in it making one.
- The fraudster pretended to be from a card provider which was not a bank and so K should have realized that it was a fraud when the fraudster talked about bank accounts. It has added that "*No bank would ever call (a customer) to discuss accounts held with another financial institution and this should have been a red flag for (K)*".
- Its customers are businesses, and it would "*disrupt the running of their business*" if it "*paused payments*" in the way K has described.
- This fraud was unusual in that there were long gaps of around 25 minutes between payments one and two, and two and three. It has said that fraudsters "*usually drain accounts rapidly*" so in this case it had no indication that a fraud was taking place.

I accept the sincerity of ClearBank's comments, but I don't think they justify its failure to act.

With respect to COP, it can certainly help to reduce mistakes and errors, but on its own it is not fully effective at preventing APP. In this case, it seems the fraudster was coaching K in exactly how to proceed and so eliminated any effect COP could have had.

I accept ClearBank's comments that K *may* have made large payments in the past, but I still think that all three payments were sufficiently unusual that ClearBank should have identified them as potentially fraudulent. And I don't think it was appropriate for ClearBank to disregard

the fact that they were out of character for K because they may have been in character for other customers.

I am not convinced by ClearBank's statement it couldn't have contacted K because of the phone call to the fraudsters. No phone call lasts for ever and ClearBank could have held the payment until K was available. ClearBank has also pointed out that if it had held the original payments, the fraudster could have coached K into making others. While this is certainly feasible, it is also conjecture. I do not think it is a convincing reason for ClearBank to have done nothing.

Similarly, I do not think that it's fair to say the fraudster discussing several accounts with K should have been a red flag for K. I'm satisfied that the fraudster was convincing and had gained K's confidence at the time of the payments. Nor am I convinced by ClearBank's statement that pausing payments when fraud was indicated would disrupt its business customers so much that it would be unfeasible.

ClearBank has also told us that several months after this fraud took place, it contacted K about "*concerns with a card transaction*" but K didn't respond. It has said that this shows "*K isn't very responsive to (its) messages*" and therefore was unlikely to have acted to stop any of the three payments in this fraud, even if it had intervened. I do not accept its conclusion. The two sets of circumstances may have been very different and I don't think it's reasonable to extrapolate backwards from something recent to decide what may have happened in the past.

So, after considering what ClearBank has told us, I still think it had sufficient grounds to notice that all three payments were potentially fraudulent and that it should have contacted K to question them. Had it done so, I think it's highly likely that K would have withdrawn its authority for the three payments.

I'm satisfied that ClearBank was responsible for all of K's loss from payments one and two. However, the third payment was slightly different. By this time, (as ClearBank mentioned) the phone call had been going on for at least an hour and would probably have been losing credibility. Also, the third payment went to one of K's own accounts and so the fraud may have been less noticeable. And, at the end of the third payment, the money was still in an account over which K could exercise control. So, I've considered whether K can be considered partially responsible for its losses from payment three. I've considered what the law says about contributory negligence but also borne in mind the fact that I must reach a decision based on what I consider to be fair and reasonable. I'm satisfied that K was equally responsible with ClearBank for the loss from payment three, so they both take 50% liability for this loss.

Before describing how ClearBank should put things right for K, I will briefly outline my findings about the point, which ClearBank accepts, that it did not act quickly enough to recover K's money after K reported the fraud. I agree with ClearBank's view that by this time it was very probably too late to recover the money. Nonetheless, the delay would have been inconvenient for K. But, as I mentioned above, ClearBank has already offered K £75 for this inconvenience. I think this is appropriate compensation in this case and I won't tell ClearBank to increase it.

Putting things right

To put things right for K, ClearBank should return it to the financial position it would have been in if the losses for which ClearBank was responsible had not happened.

ClearBank should therefore:

- Refund K all of payments one and two and half of payment three, a total amount of £28,071. (ClearBank may deduct any funds which have already been returned to K)
- Add simple interest to the refund at the rate of 8% per year from the date of the fraud until the date it makes the refund.

If ClearBank has not already paid K the £75 it offered for its delay in trying to recover the money, then it should add this amount to the above compensation. But it does not need to pay anything further for the way it handled K's complaint.

My final decision

For the reasons I have set out above, I am upholding K's complaint about ClearBank Limited. If K accepts my decision, ClearBank should pay it the compensation I have described..

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 11 April 2023.

Steve Townsley

Ombudsman