

The complaint

C, a limited company, complains that ClearBank Limited refuses to refund the money lost to a scam from its Tide-branded business bank account.

Mr W brings this complaint in his capacity as C's director.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

- In mid-July 2022 Mr W received a call from someone purporting to work for Tide but who turned out to be a scammer. The scammer convinced Mr W that C's Tide-branded business bank account was at risk and persuaded him to move almost all the money (£55,200) out of the account via two faster payments. The scammer led Mr W to believe that this money was being sent to new accounts held in his name. But when the accounts didn't show up on his online banking, he realised he'd been scammed.
- ClearBank tried to recover C's money from the two receiving accounts after Mr W reported the scam. But the money had already been withdrawn. It refused to refund either payment, but offered £50 compensation to recognise its poor handling of the matter, including its failure to contact the receiving bank promptly. Mr W remained unhappy, so referred a complaint to this service.
- Our investigator thought the first, £40,000 payment, was so out of character that ClearBank ought to have intervened before allowing it to go through. She thought the scam would've been uncovered and C's losses prevented. So she recommended that ClearBank should refund both of the disputed transactions, but it disagreed. However, ClearBank accepted the investigator's proposal to increase its compensation award to £200.

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, and despite what ClearBank has said and provided, I've reached the same outcome as the investigator for much the same reasons. I think ClearBank should refund all of the money C lost to the scam (along with interest to recognise that C has been deprived of that money) and also pay £200 compensation. I've reached this conclusion having taken the following into account.

There's no dispute that Mr W authorised both of the disputed payments on behalf of C. So, although he didn't intend the money to go to the scammer, under the Payment Services Regulations 2017, and the terms and conditions of the account, C is presumed liable for the loss in the first instance. But the matter doesn't end there.

ClearBank should also be on the lookout for, and help to prevent, payments that could involve fraud or be the result of a scam. I accept a balance must be struck between identifying payments that may indicate a customer is potentially at risk of financial harm – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments. But I do think ClearBank should have identified a risk in this particular case.

ClearBank says its fraud detections systems weren't triggered by either payment. It's pointed out that it believes the threshold for such triggers are different for retail and business customers. And it says it's not unusual for business customers' spending to evolve and payments to increase in value as time goes on. I've considered carefully what ClearBank has said and also reviewed the statements its provided showing how C's account was operated in the previous year or so since it was opened. The highest payment made from the account in that period of time was considerably less than the £40,000 payment that was initially sent to the account controlled by the scammer and it greatly depleted the account balance. The £15,200 payment that followed was made just 30 minutes later and took the balance to less than £300. I also note the Confirmation of Payee (COP) checks revealed that the payee names Mr W entered didn't match the actual names on the receiving accounts. I think these circumstances bore the hallmarks of a scam and ClearBank ought to have blocked the £40,000 payment and contacted Mr W to ask some appropriate questions. Had it done so I see no reason why it wouldn't have been able to uncover the scam and prevent C's losses.

When setting up the new payees in order to make the two disputed payments, the scammer guided Mr W into entering payee names that matched or closely matched his own name. Mr W seems to have done so because he thought the money was being moved into safe accounts held in his own name. But he also says he doesn't have control over those accounts and I have no reason to doubt him. I say this, not least, because (as I've already mentioned) ClearBank has provided evidence that shows the COP checks revealed that the actual account name didn't match the account name that Mr W had entered. ClearBank says the resulting messages he was shown that confirmed this ought to have stopped Mr W making the payments. But the examples messages ClearBank has provided say only to make sure the recipient's details are correct and warn that the sender might not get their money back if its sent to the wrong account. The messages make no mention of the possibility that a scam might be taking place. When we asked, Mr W said he didn't remember seeing the messages, but six months had passed since the disputed transactions took place and I appreciate that memories can fade over time. In the circumstances Mr W has described, I can well imagine that the scammer guided him past these messages, with the effects that they didn't really register or ring true to the situation he found himself in.

I can also understand why Mr W accepted what the scammer was telling him given they seem to have 'spoofed' one of Tide's genuine contact numbers, and knew very specific details about the account and the way Tide's app-based platform operated. This was possible, it seems, because Mr W provided some details about his account the day before after replying to what he thought was a genuine message about an expected delivery but which was, in fact, a 'phishing' exercise. I don't think Mr W ought to have realised he was being scammed or ought to have done more to verify the caller's identify before complying with their requests. Overall, as I don't think Mr W (on behalf of C) acted unreasonably it wouldn't be fair to conclude that C should share liability with ClearBank for its losses.

ClearBank has already agreed to increase the compensation award from £50 to £200 and I think that's fair in the circumstances. ClearBank should have contacted the receiving bank sooner, but it's clear that this wouldn't have made a difference because C's money was removed from the receiving accounts very soon after it went in and well before Mr W reported the scam. More importantly, I think, ClearBank should have responded more

promptly to Mr W's enquires about the progress of his claim, including whether it was safe to continue using the business account.

My final decision

My final decision is that I uphold this complaint and instruct ClearBank Limited to:

- Refund £55,200 to C's account.
- Pay interest on the above refund calculated at 8% simple per year (less any tax properly deductible*) from 16 July 2022 to the date of settlement.
- Pay an additional £200 compensation (or £150 if ClearBank has already paid the £50 it initially offered).

*If ClearBank Limited considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr W how much it's taken off. It should also provide a tax deduction certificate if Mr W asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

ClearBank Limited should settle the matter within 28 days of receiving notification of the acceptance of my final decision.

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

Ruth Hersey
Ombudsman