

## **The complaint**

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

ClearBank partners with Tide to provide its accounts. While I've referred to both, ClearBank is ultimately responsible for this 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:

- The starting position under the Payment Services Regulations 2017 (PSRs) is that Mr S isn't liable for payments he didn't authorise. So I've firstly considered whether these disputed payments would be regarded as authorised under the PSRs.
- The regulations explain that to consider a payment authorised, Mr S must have given its consent to it – and that consent must have been in the form, and in accordance with the procedure, agreed between it and ClearBank.
- ClearBank submit that because Mr S went through the steps in the Tide app to complete the payment, it's authorised. But I don't think these authentication steps could fairly be described as the entire form and procedure for consenting to a payment. Afterall, a payment couldn't happen with these steps alone. So I've instead looked at the necessary practical steps to make these debit card payments. It seems Mr S needed to enter his card details on the merchant's website, and when prompted, follow the steps in his app to complete the payment.
- Here, because it's accepted it was fraudsters who used Mr S's card details on the website, I'm not satisfied that Mr S went through all the necessary steps to consent to these disputed payments.
- I've also considered whether Mr S could reasonably be said to have given permission for someone else to go through the form and procedure on his behalf. It seems fraudsters had stolen Mr S's card details, and they tricked him into going through the steps on his app under the guise he'd receive a refund for fraud. Given this deception, I don't think I could reasonably conclude he gave permission for someone else to consent to these payments.

- Taking this all into account, I'm satisfied the disputed payments were unauthorised for the purposes of the PSRs.
- I've gone on to consider whether, in line with the PSRs, ClearBank has shown there's a reason Mr S shouldn't be refunded for these unauthorised payments. While it's not explicitly stated a reason, it's pointed to how Mr S went through steps in the app which, in part, caused the fraud to happen. So I've looked at whether he failed with gross negligence to comply with the terms of the account and keep his personalised security details safe – something which, if proven, would mean he wouldn't be entitled to a refund under the PSRs.
- ClearBank has accepted this was a sophisticated scam. And I can see how Mr S was duped by the convincing email that appeared to come from PayPal. And why he called the number as instructed when he didn't recognise the payment.
- When he called, Mr S said they knew several pieces of personal and sensitive information about him – and how they told him his account, via Amazon, had been compromised and someone was making fraudulent payments. Mr S said this coincided with emails that appeared to come from Amazon for purchases he didn't recognise.
- Given their familiarity with his information and how it appeared to coincide with other sources of information, I can see why Mr S trusted he was genuinely speaking to PayPal and why he became concerned he was a victim of fraud. I think lots of people would've done in these deceptive circumstances.
- Mr S was told he'd need to approve refunds for the fraudulent payments, which is why he went through the steps in his Tide app. I accept these refer to verifying and approving payments. But I can also appreciate how, in the heat of the moment, talking with someone he trusted, Mr S found it plausible he'd need to do this for a refund – in the same way your PIN might be needed to approve a refund in shops.
- ClearBank submit Mr S had used these steps before, so should've known it was for making payments rather than receiving them. But, like most people, he wasn't an expert in fraud – so I can see why it wasn't obvious to him that these steps couldn't also be used for other purposes.
- I've also considered ClearBank's points that Mr S could've asked more questions and done more to verify what he was being told. Of course, it's possible to criticise his actions with the benefit of hindsight. And I accept he might not have acted perfectly reasonably. But given the overall sophistication of the scam, and how it was designed to engineer its victims into acting hastily, I don't think this is enough to show he acted with *very significant* carelessness to conclude he failed with *gross* negligence.
- It follows that, in line with the PSRs, I don't consider he can be fairly held liable for these unauthorised payments and ClearBank must put things right – by refunding his remaining losses from the payments alongside 8% simple interest per year to compensate him for the time he's been out of pocket.

### **My final decision**

For the reasons I've explained, I uphold Mr S's (trading as E's) complaint. ClearBank Limited must:

- Pay Mr S 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 S to accept or reject my decision before 18 October 2023.

Emma Szkolar  
**Ombudsman**