

The complaint

T complains that ClearBank Limited (ClearBank) is refusing to refund it the amount it lost as the result of a scam.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, T received a call from someone pretending to be from ClearBank, I will call this person X. The number they called from matched the number on the back of T's card issued by ClearBank.

X asked T security questions as would be expected when receiving a call from the bank and explained that T's account had been breached. Their funds would need to be sent to a new account. X guided T to scan QR codes and authorise new payees which were then used to take funds from their account. One of the new payees appeared to be in the same name as T but was not in T's control.

Following the scam ClearBank attempted to recover the funds from the receiving accounts, but the funds had already been moved on.

The following payments were authorised from T's account:

<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Payment Amount</u>
8 August 2022	T	Transfer	£30,000.00
8 August 2022	SARAVANAN PALANIMALAI LTD	Transfer	£12,913.65

Our Investigator considered T's complaint and thought it should be upheld. T agreed but ClearBank disagreed, so this complaint has been passed to me to decide.

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.

It has not been disputed that T has fallen victim to a cruel scam. The evidence provided by both T and ClearBank sets out what happened. What is in dispute is whether ClearBank should refund the money T lost due to the scam.

Recovering the payments

Payments were made into the scam via transfer. When payments are made by transfer ClearBank has limited options available to it to recover the payments.

I can see from the evidence provided that ClearBank did attempt to recover the payments

from the receiving accounts, but the funds had already been moved on.

It is common for scammers to move funds on from the receiving banks immediately following the funds being received. So, with the above in mind, I am satisfied that ClearBank did not have any reasonable recovery options available to it.

Should ClearBank have reasonably prevented the payments made?

It has been accepted that T authorised the payments that were made from their account with ClearBank, albeit on X's instruction. So, the starting point here is that T is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether ClearBank should have been aware of the scam and stepped in and questioned T about the payments being made. And if it had questioned T, would it have been able to prevent the scam taking place.

The first payment sent from T's account was for the high value of £30,000. In the months leading up to this payment an amount like this had not been sent from T's account. I think the size of this payment should have been considered unusual and triggered ClearBank's fraud prevention systems prompting it to step in and question T about the payment.

ClearBank has said T previously made large payments from the account and that this should be considered. I have thought about what ClearBank has said but can see the payments it has referred to were made more than 12 months before the scam payments. I don't think it would be reasonable to conclude from payments made so long ago that it was common for T to make payments of this size and that ClearBank should not have had any concerns.

Had ClearBank stepped into question T about the £30,000 payment, as I think it should reasonably have done, I see no reason why T would not have been honest about the reason they were making this payment. Considering the type of scam that was taking place and that ClearBank would have known it had not made any requests for T to move their funds I think it's most likely the scam would have been uncovered and prevented.

As ClearBank missed an opportunity to prevent the scam taking place it is responsible for T's loss.

Did T contribute to their loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances I don't think it would be fair to say T contributed to the loss. I say this because X used a sophisticated method to make T believe it was calling from their bank. The number it called from matched that found on the back of T's card issued by ClearBank and it asked the same type of questions ClearBank usually asked when authorising its customers. In addition to this, the first payment made from T's account appeared to be in T's own name. I think T reasonably believed X to be a representative of ClearBank and I don't think T contributed to its loss.

Putting things right

To put things right ClearBank Limited should refund the total amount T lost to this scam plus 8% simple interest from the time the payments were made to the time it is reimbursed.

My final decision

I uphold this complaint and require ClearBank Limited to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 6 February 2024.

Terry Woodham
Ombudsman