

## **The complaint**

A limited company, which I'll refer to as 'E', is unhappy that ClearBank Limited ("CB"), won't reimburse money that E lost because of a scam.

E has an account with Tide, which is provided by CB. As such, CB is the respondent business and reference to CB includes the actions of Tide.

E's complaint is brought to this service by its director, whom I'll refer to as 'Mr D'.

## **What happened**

Mr D was telephoned by scammers pretending to be from CB who convinced Mr D to transfer the balance of E's account to what he believed was another CB account. Mr D later realised that E has been scammed and contacted CB about it. CB were able to recover some, but not all, of the money that E had been scammed out of. Mr D felt that CB shouldn't have allowed the large payment to leave E's account in the first instance without confirming the legitimacy of the payment with E. So, he raised a complaint on E's behalf.

CB responded and explained that they didn't feel that they'd acted unfairly by processing the payment without confirming the legitimacy of the instruction first. Mr D wasn't satisfied with CB's response, so he referred E's complaint to this service.

One of our investigators looked at this complaint. They felt that it had been understandable that Mr D had fallen victim to the scam. But they also felt that the payment Mr D instructed was clearly out of keeping with how E maintained its account such that CB should reasonably have confirmed the legitimacy of the instruction before allowing it to complete.

Our investigator also felt that if CB had contacted Mr D to ask him about the payment instruction, it was likely that the scam would have been uncovered and prevented at that time. As such, our investigator recommended that this complaint should be upheld in E's favour and that CB should reimburse to E the money it had lost.

CB didn't agree with the view of this complaint put forwards by our investigator, so the matter was escalated to an ombudsman for 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.

In broad terms, the starting position in law is that a business such as CB is expected to process payments and withdrawals that an account holder authorises, in line with the terms of the account. However, where an account holder made the payment because of the actions of a fraudster, it may sometimes be fair for the business to reimburse the account holder, even though they authorised the payment.

This is because the regulatory landscape, along with good industry practice, sets out a requirement for businesses such as CB to protect their account holders from fraud and financial harm. And this includes monitoring transactions to look out for unusual or suspicious activity that might suggest an account holder was at risk, with the onus on the business to intervene before allowing a potentially illegitimate payment to complete.

In this instance, Mr D was convinced by the scammers to effectively transfer the full balance of E's CB account to another account. And so, I've reviewed E's CB account history to determine whether I feel this instruction was one which I feel CB reasonably should have flagged as being suspicious such that some form of intervention by CB should have occurred before the payment was allowed to complete.

Ultimately, upon consideration, I do feel that the payment instruction under consideration here was one which was clearly out of keeping with how E generally managed and maintained its account and therefore was one which CB should have recognised as being potentially suspicious such that some form of intervention by CB was merited.

One reason I say this is because the transfer amount – approximately £14,400 – was unusually high and out of keeping with E's account usage in general. Notably, the majority of transfers from E's account are much smaller in nature, with only a handful of payments exceeding £4,000 – over £10,000 less than the payment in question – having taken place since the account was opened in August 2019, and with the largest of these amounting to just over £5,700.

CB note that soon after the account was opened in August 2019, Mr D made a purchase using the account for close to £40,000, and I'm aware that CB have considered this payment when assessing Mr D's spending pattern. However, this service generally considers how an account has been used during the twelve months leading up to any disputed payment to be a more reflective indicator of usual spending for the purposes of monitoring an account.

Accordingly, I do feel that CB should have reasonably considered the £14,400 payment instruction to have been unusual and out of keeping with how E generally maintained its account and so should have intervened and contacted Mr D to question the payment instruction before allowing it to complete.

Furthermore, given that Mr D believed he was acting under instructions of a representative of CB in instructing the transfer, I feel that had CB contacted him and made further enquiries about the seemingly out-of-character payment, that it would have been highly likely that the fact that Mr D was in the process of being scammed would have been uncovered at that time and that the scam would have been prevented.

CB have explained that E's account was a business account and that they don't feel that a business instructing a larger than usual payment should be considered as suspicious, given the inherent nature of business. And CB have also explained that they do have systems in place to monitor payment instructions but reiterated that the instruction in question wasn't considered by them as being potentially suspicious.

But I continue to feel that the £14,400 payment instruction in question was clearly out of keeping with how E used its account, given that this payment was nearly £10,000 more than the largest legitimate payment on E's account in the preceding twelve months, and I don't feel that the account should be reasonably subject to a lesser degree of protection or scrutiny simply because it was a business account and not a personal account.

While I accept that CB do have to strike a balance between executing payment instructions and causing inconvenience to their customers, and that they do have systems in place to

monitor for suspicious transactions and instructions, I don't feel that the use of these systems has led to a fair outcome in this instance.

And this is because, ultimately, as I've explained previously, I feel that CB's systems should reasonably have flagged the payment instruction as being unusual and as being one which merited some form of intervention before it was allowed to complete – and this is regardless of any potential inconvenience this may have caused E, had the instruction been legitimate.

Finally, I've considered whether Mr D himself could and should reasonably have acted differently here, in response to the scam, such that he should be considered partially accountable for the loss that E incurred.

But it seems clear that this was a very sophisticated scam, including that the scammers used a cloned telephone number belonging to CB so that the call that Mr D received appeared to him to be being received from CB directly. And Mr D has also explained how the caller explained that they were from CB, knew that E held a CB account, and asked Mr D to verify his identity for security purposes via a QR code that they sent to him.

Mr D now understands that by scanning this QR code, he gave the caller access to E's account. But given that this is a relatively new method to access accounts, and that it was unfamiliar to Mr D, I can appreciate why he didn't recognise the danger at the time.

Furthermore, because the caller then had access to E's account, they were able to use the information within to 'verify' some recent transactions that had been made, which served to further convince Mr D that the caller was genuine. And in consideration of all these points, I don't feel it was unreasonable or negligent for Mr D to have fallen victim to this scam as he did, and so I don't feel that E should fairly be held jointly or partially accountable for the loss it incurred here.

All of which means that my final decision here will be that I'll be upholding this complaint in E's favour and instructing CB to reimburse to E's account the presently unrecovered loss from the scam – which I understand to be £10,010.10 – along with interest on that amount for the time the amount has been unavailable to E, calculated at a rate of 8%.

It's also my understanding that CB have offered to make a payment of £200 to E as compensation for the inconvenience E incurred resulting from a delay in CB reimbursing to E's account the funds that they were able to recover. This compensation amount feels fair to me in consideration of this specific inconvenience, and so my instructions here will also include that CB must make this payment to E, if it hasn't done so already.

### **Putting things right**

CB must reimburse the presently unrecovered loss from the scam along with interest on that amount for the time the amount has been unavailable to E, calculated at a rate of 8%.

CB must also make a further payment of £200 to E if it hasn't already done so.

### **My final decision**

My final decision is that I uphold this complaint against ClearBank Limited on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 7 July 2023.

Paul Cooper  
**Ombudsman**