

The complaint

J complains that ClearBank Limited have not refunded £4,250 that they lost as part of a scam.

What happened

J, a limited company, contacted a third-party company to purchase plant machinery. They communicated via text and received videos of the machinery they intended to buy. They agreed to pay a 50% deposit prior to viewing the machinery with the agreement they could receive a full refund, minus delivery costs, if they were not satisfied. They received an invoice for the payment and paid 50%, totalling £4,250, on 18 December 2022.

They went to the address the following day to inspect the machinery, and found an unrelated company who confirmed there had been three separate incidents of people coming to collect machinery as part of the same scam. It was at this point they realised they too had been victims of the scam and they contacted ClearBank later that evening to raise a dispute.

ClearBank contacted the beneficiary bank to try and recover J's funds. Unfortunately, they found that none of the funds remained so nothing could be recovered on J's behalf. As there had been no opportunity for ClearBank to intervene with the payment prior to it debiting J's account, they did not agree they had made an error in the circumstances. But they did think they should have provided the outcome for J's claim sooner, so offered them £75 compensation.

J referred the complaint to our service and our Investigator looked into it. Having done so, they felt that the payment itself was not unusual or out of character for J, so they did not think ClearBank should have intervened prior to it leaving the account. And they therefore did not agree that ClearBank missed an opportunity to prevent the scam. They also noted that by the time J reported the scam to ClearBank, the funds had already left the beneficiary account, so none could be recovered. Because of this, they did not think ClearBank could have done more to stop the scam or recover the funds.

J responded and said that they were not responsible as they were not aware that the fraudsters were out to scam them and they genuinely believed they were involved in a legitimate sale for plant machinery.

As an informal agreement could not be reached, the complaint has been passed to me 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.

Having done so, I agree with the Investigator for largely the same reasons. I don't think

ClearBank missed an opportunity to reveal the scam and I don't think it could reasonably have recovered the funds, so I don't require it to refund the £4,250. I'll explain why in more detail.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that J authorised the payment of £4,250 as it believed it was part of a legitimate sale. So, while I recognise that J didn't intend the money to go to scammers, the starting position in law is that ClearBank was obliged to follow J's instruction and process the payment. Because of this, J is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether ClearBank did enough to try to keep J's account safe.

I've considered the payment itself in comparison to J's normal account activity. Having done so, it wasn't particularly unusual or out of character. J had made other payments of relatively similar amounts in the months prior, and I don't think its value was so high that this on its own should have flagged as suspicious. In addition, the payment was only a portion of J's account balance, and this was a singular payment that wasn't part of a series. So, considering the value and the type of payment involved, I don't think ClearBank should have flagged it as suspicious, and I don't think they therefore missed an opportunity to discover the scam.

ClearBank have accepted that they did not request a return of the funds as quickly as they should have done. However, they have provided evidence that the funds were withdrawn from the beneficiary bank account on the same day the transfer was made, 18 December 2022. J raised the dispute about the funds on 19 December 2022, meaning that even if ClearBank had acted promptly to request a return of the funds, none would have remained.

I've gone on to consider the fact that ClearBank could have provided J with a response to the claim sooner and this was an error in communication on their end. On balance, I think the £75 compensation they have offered is fair in the circumstances when considering this delay.

I appreciate J's comments that it was unaware that this was a scam and it thought this was a legitimate purchase. I want to make it clear that I do not doubt this and that this complaint is set up against ClearBank, so within it I have considered the actions of ClearBank in relation to the payment. Having done so, I cannot agree that they missed an opportunity to uncover the scam or recover the funds once they were aware of it. For these reasons, I don't agree that they made an error in the circumstances so I do not uphold this part of the complaint.

My final decision

I do not uphold J's complaint against ClearBank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 5 October 2023.

Rebecca Norris
Ombudsman