

Complaint

M, a limited company, is represented by its director, Mr M. He complains that ClearBank Limited ("Tide") hasn't reimbursed the company after it fell victim to a scam.

Background

In June 2022, Mr M fell victim to a scam. He had been looking into leasing a new vehicle, agreed terms with an individual and made an upfront payment. After doing so, he became concerned that the arrangement was a scam and so he notified Tide the following morning.

Later that day, Mr M was targeted by a separate scam. He received a text message that purported to be from Tide. This resulted in a telephone conversation with someone who claimed to be one of its employees. They persuaded Mr M that they were a genuine employee by drawing his attention to the number they'd called him on. Mr M tells us that he asked his partner to search for Tide's number online and found that it matched the number that had called him. He was unaware that it was possible for fraudsters to spoof phone numbers in this way.

The individual told him that a fraudster was attempting to remove money from his company account. It was therefore essential that he transfer his funds to a "safe" account without delay and that one had already been set up for him. He made two transfers for £3,641.98 and £2,745.35 respectively. These transfers reduced the balance on his account to zero.

Once he realised he'd fallen victim to a second scam, he notified Tide. It didn't agree to reimburse him. It said that, once notified of the scam, it had done everything it could to recover M's money from the receiving accounts and there was nothing further it could do. Mr M was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part.

The Investigator thought that Tide should've recognised that there was an enhanced risk of a scam when Mr M asked it to make the payment of £2,745.35. In his view, this was out of character for the account and Tide shouldn't have processed it without first checking with its customer to ensure it wasn't at risk of financial harm due to fraud. If it had done so, the Investigator was persuaded that the scam would've been prevented.

Tide disagreed with the Investigator's view. It noted that the Investigator had attached some significance to the fact that these payments were to a new payee. But Tide pointed out that since opening the account, M had added 13 new payees – averaging around three per month. It pointed out that M was a business customer – and activity that might appear concerning on a personal account might not do so on a business account. Finally, it wasn't convinced that, even if it had contacted Mr M, that he would necessarily have engaged with them and so it can't be taken for granted that this would've prevented the scam from taking place.

As Tide disagreed with the Investigator's view, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting position under the relevant regulations is that M is generally liable for authorised transactions. It's common ground that these payments were authorised and so M is presumed liable at first instance. However, good industry practice required that Tide be on the lookout for account activity that was out of character or unusual to the extent that it might be indicative of a fraud risk. On identifying such activity, I'd expect it to take reasonable steps to protect its customer from that risk.

The Investigator found that the third payment marked the point at which Tide ought to have identified the risk and I agree with that conclusion. The account had paid over £6,000 in two transactions made in quick succession and these reduced the balance on the account to zero. Furthermore, the two payments M made as part of the safe account scam came *after* he'd notified Tide that he'd fallen victim to the first scam. In my view, Tide ought to have displayed greater vigilance against the risk that M might be targeted for a second scam like this one.

It shouldn't have processed that third payment without first making enquiries with M to ensure that it wasn't at risk of fraud. I've also considered, if Tide had intervened in the way I've described, whether the scam would've been prevented. I recognise Tide's argument that I cannot know with certainty what would've happened if it had taken steps to intervene. When dealing with such uncertainty, I have to consider the question on the balance of probabilities – i.e. does the evidence show that, if Tide had intervened in connection with the third payment, it's more likely than not that the scam would've been prevented?

Mr M doesn't appear to have been coached by the scammer or prepared to respond to any such challenge – so if he'd been asked about the motivation for making the payment, there's no reason to think he would've been anything other than candid. It follows that it's more likely than not the scam would've quickly come to light and Mr M would've been prevented from making that third payment.

For completeness, I also considered whether Tide did everything it needed to do once it became aware of the scam. I can see that it contacted the banks that operated the fraudster's accounts in an attempt to recover M's money – but unfortunately, the funds had already been moved on and so no recovery was possible.

Final decision

For the reasons I've set out above, I uphold this complaint in part.

If M accepts my decision, ClearBank Limited should refund the third transaction of £2,745.35. It should also add 8% simple interest per year to that sum calculated to run from the date the payment left M's account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 16 November 2023.

James Kimmitt
Ombudsman