

The complaint

Mr S complains that Clydesdale Bank Plc (“Clydesdale”) won’t refund over £24,000 he spent on his credit card as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mr S fell victim to an investment scam after seeing an advert about cryptocurrency investments with the broker “Safe Markets” (“the scammer”) in 2017. The scammer opened him up a fake trading account, where he was encouraged to invest by making the following payments from his Clydesdale credit card (not including transaction fees):

Date	Payee	Amount	Method of payment used
15/05/2018	BO Trader	4,408.91	Credit card
16/05/2018	Bo Trader	2,195.44	Credit card
16/05/2018	Bo Trader	878.18	Credit card
16/05/2018	BO Trader	2,195.44	Credit card
17/05/2018	Bo Trader	2,627.66	Credit card
17/05/2018	Bo Trader	4,379.43	Credit card
05/06/2018	Bo Trader	879.03	Credit card
11/06/2018	BO Trader	883.05	Credit card
12/06/2018	BO Trader	2,649.39	Credit card
12/06/2018	BO Trader	2,649.39	Credit card
12/06/2018	BO Trader	1,766.26	Credit card
12/06/2018	BO Trader	2,649.39	Credit card

Mr S also received the following credits into his account from the scammer:

Date	Credit received from	Amount
12/06/2018	BO Trader	£2,705.63
12/06/2018	Bo Trader	£1,805.96

He realised he had been scammed when he was being asked to make further deposits in order to withdraw his money. He reported the fraud to Clydesdale, but it failed to respond, so Mr S brought his complaint to this service.

Our service made several requests to Clydesdale for information and evidence, but again, it failed to respond, other than to say it would be asking its disputes team to review the case. However, no response was received.

As a result, our investigator upheld the complaint in part. She thought that Clydesdale ought to have intervened from the third payment Mr S made on 16 May 2018 and considered that it could have prevented any further loss if it had done so. However, the investigator also thought Mr S should share joint liability for his loss as a result of his own contributory negligence.

Mr S didn't dispute joint liability for the loss but thought that Clydesdale should have intervened from the very first payment as he hadn't used his credit card for several months prior to making the first scam transaction. Given Mr S didn't agree, and as Clydesdale failed to respond to the investigator's view, the matter has been escalated to me to issue 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 conclusions reached by the investigator and have decided to uphold it in part for the reasons set out below:

- It isn't in dispute that Mr S has fallen victim to a scam here, nor that he authorised the disputed payments he made to BO Trader using his Clydesdale credit card (where his funds were subsequently transferred on to the scammers). The payments were requested using his legitimate security credentials provided by Clydesdale, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.
- However, I've considered whether Clydesdale should have done more to prevent Mr S from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.
- Given Clydesdale has not provided any information or evidence to this service about the payments, we don't know if any of the payments did in fact flag as unusual or suspicious. But having reviewed the transactions, I'm satisfied there was enough unusual activity to

warrant an intervention by Clydesdale.

- I'm not persuaded the first three payments listed in the table above would have appeared unusual enough to have flagged on Clydesdale's fraud monitoring systems. They were not particularly large and, while I appreciate Mr S may not have used his credit card for several months, it is not unusual to expect one-off large purchases to be made on a credit card from time to time. So, I won't be asking Clydesdale to refund these payments. However, on 16 May 2018 Mr S made *multiple* payments to the same payee in on the same day, which Clydesdale should know is typically indicative of someone falling victim to a scam. As a result, I'm satisfied it should have intervened by the third payment of £2,195.44 made on 16 May 2018 to question him about the nature of the payments.
- If Clydesdale had asked Mr S what the payments were for and the basic surrounding context, I have no reason to doubt that he would've fully explained what he was doing. It could have asked him how he found the broker, and whether he had checked they were regulated or featured on the FCA warning list. An FCA warning had in fact been published about Safemarkets in April 2018, so it's likely he would have discovered this warning, and I don't think he would have gone on to make any further payments from his Clydesdale credit card as a result. So, but for Clydesdale's failure to act on clear triggers of potential fraud or financial harm, Mr S probably wouldn't have lost any further money. Therefore, I think it is fair and reasonable for Clydesdale to refund the money lost from the point it should have intervened.
- Given Mr S has not disputed joint liability as a result of his own contributory negligence, I don't intend to explore this point any further, other than to say that I agree it would be fair and reasonable for him to share liability for his lack of due diligence and failing to question unrealistic promises made by the broker, such as 'risk free' trading.
- I've also considered whether Mr S would have any recourse for recovering his money by making a Section 75 claim under the Consumer Credit Act 1974. However, in this instance, he did not pay the scammer directly, so there would be no valid debtor/creditor/supplier agreement for such a claim to succeed. There would've also been no prospect of a chargeback claim being made for these transactions either given the timeframe to dispute the payments had passed by the time Mr S reported the payments.

My final decision

For the reasons given above, I uphold this complaint and direct Clydesdale Bank Plc to:

- Refund 50% of the payments Mr S made to the scammer from the third payment made on 16 May 2018 onwards, less any credits received into the account;
- Refund 50% of the associated transactions fees;
- Rework the credit card account as if 50% of the payments had not been made;
- If this results in a credit balance, pay 8% simple interest per year on any payment that would have resulted in a credit balance from the date of each payment to the date of settlement;
- Amend Mr S's credit file to reflect the direction set out in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 December 2023.

Jack Ferris
Ombudsman