

## **The complaint**

A company, which I'll refer to as A, complains that ClearBank Limited won't refund payments it didn't make. Mr S, who is the director of A, brings the complaint on A's behalf.

ClearBank partners with Tide to provide accounts for its customers. For ease, I've generally referred to ClearBank throughout the decision as it's ultimately responsible for the complaint.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving the reasons for my 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've reached the same outcome as our investigator for these reasons:

- In line with the Payment Services Regulations 2017 (PSRs), the starting position is that A isn't liable for payments it didn't authorise.
- To determine authorisation, I've considered regulation 67 of the PSRs. This says that a payment is to be regarded as authorised if A consented to the execution of it – and that consent must have been given in the form, and in accordance with the procedure, agreed between ClearBank and A.
- ClearBank hasn't given us the terms and conditions, but I've reviewed what appears to be the relevant ones on its website to establish the agreed form and procedure.
- Of most relevance to the disputed payments, the terms describe how payments are to be initiated by *"accessing and giving us instructions through the Tide Platform"* as well as how A needs to make sure the details of the payment instruction are correct as well as the result of Confirmation of Payee. They also mention how A can consent to the payment using the Tide platform.
- In this case, while I accept Mr S was tricked into completing steps in his app, it was fraudsters, having gained access to A's account, who set up the payment instruction. who it's accepted that fraudsters accessed A's account to set up the payments and So, while I accept Mr S's involvement, I'm not persuaded he went through the entire form and procedure that's required to consider the payments authorised under the PSRs.
- I've considered ClearBank's point that Mr S's role in the payments was pivotal to the transfers, so it's a misconception to call them unauthorised. But equally, without the fraudsters setting up the payments, they couldn't have happened. So I consider that the form and procedure fairly and reasonably goes beyond the steps in the app – and

that because Mr S didn't complete these steps in their entirety, they're not authorised, in line with the PSRs.

- ClearBank can still hold A liable if it can show Mr S failed with gross negligence to comply with the terms of the account and keep A's personalised security details safe. While ClearBank hasn't explicitly argued this, because it seems some of their submissions allude to it, I've nonetheless considered it.
- On the whole, I can see how Mr S trusted the caller was from his genuine bank, given the personal and sensitive information they knew and how they referred to recent fraudulent transactions using A's card.
- During the call, I understand that Mr S was asked to use remote access software as well as scan a QR code to access A's account. It seems he was also asked to share a one-time code and complete steps in his app. Mr S recalled being told this was to check for malicious software as well as to refund A for the fraudulent transactions.
- It's of course possible to be critical of Mr S's actions with the benefit of hindsight. But, given his genuine belief he was talking with his trusted bank, and his understandable worry that A was at risk of fraud, I can understand how he followed their instructions. Particularly given that he, like most people, wasn't an expert in fraud or cyber security. So, I don't think Mr S acted with *very significant* carelessness to conclude he was *grossly* negligent.
- In saying this, I appreciate that some of the steps Mr S went through mentioned the payment details. Although, it's not exactly clear to me what he saw because ClearBank has only shared an updated version. But even with the details, I'm mindful that it's likely he'd have been primed to expect these steps from the caller and, given his trust in them, most likely didn't stop to read and questions things. Indeed, I can see from the account logs that he accessed the app and went through the steps in 30 seconds.
- Taking this all into account, I don't think ClearBank has shown Mr S failed with gross negligence. So A isn't liable for the disputed payments and ClearBank needs to put things right – by refunding its losses from these unauthorised payments alongside interest to compensate it for the time it's been out of pocket.
- I understand that ClearBank has already paid A £75 for the inconvenience caused by its delay in responding to its fraud claim, which I think is fair in the circumstances. I make no further award for non-financial losses.

### **My final decision**

For the reasons I've explained, I uphold A's complaint. ClearBank Limited must:

- Pay A the total of the unauthorised payments, less any amount recovered or already refunded.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised payments to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 15 February 2024.

Emma Szkolar  
**Ombudsman**