

The complaint

A company, which I'll refer to as T, complains that ClearBank Limited won't refund payments it didn't make. Mr C, who is the director of T, brings the complaint on T'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. The facts are not in dispute, so 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 T 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 T 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 T.
- I've reviewed the terms and conditions ClearBank has provided us with to establish the agreed form and procedure. These refer to how T can instruct a payment order from the Tide Platform using Faster Payments, and how T can consent to said payment order within the Tide Platform interface.
- It's accepted that it was fraudsters who, having gained access to T's account, set up the payments. But ClearBank submit that because Mr C completed the latter steps in his app which ultimately made the payments, they were authorised.
- While I accept Mr C's involvement, I've considered how, without the fraudsters' involvement setting up the payments, they couldn't have happened – after all, there would've been no payments for Mr C to respond to. So, I'm persuaded the form and procedure fairly and reasonably goes beyond the steps in the app – and that because Mr C didn't complete the steps in their entirety, they can't reasonably be considered authorised according to the PSRs.
- In saying that, I've also considered whether Mr C could reasonably be said to have given permission for someone else to go through the steps on his behalf. But Mr C didn't know fraudsters set up the payments and was tricked into taking steps thinking he was keeping T's account safe and receiving refunds for fraud. So I don't consider

that could fairly be described as him giving permission. It follows that I'm satisfied the disputed payments were unauthorised.

- In line with the PSRs, ClearBank can still hold T liable for the unauthorised payments if it can show he failed with gross negligence to comply with the terms of the account and keep his personalised security details safe. It's not explicitly argued this, but given Mr C likely shared a one-time passcode as well as completing steps in his app, I have nonetheless considered it for completeness.
- Mr C took these steps having been cleverly convinced he was talking with his genuine bank and that T's account was being targeted by fraudsters – he's explained how they knew several pieces of personal and sensitive information and how they talked him through rejecting incoming payments in his app. Given their apparent legitimacy, I can see why, in the heat of the moment, Mr C subsequently followed their instructions and ultimately took steps in his app, thinking it would refund him for fraudulent transactions – particularly when the payee and reference referred to a refund.
- Taking this all into account, I don't think ClearBank has shown Mr C acted with *very significant* carelessness to conclude he failed with *gross* negligence. So, in line with the PSRs, T 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 T £75 for the inconvenience caused by its delay in responding to its fraud claim, which I think is fair in the circumstances. While I appreciate Mr C's personal distress over what happened, the eligible complainant here is a limited complaint who, as a distinct legal entity, can't reasonably be said to suffer distress. It follows that I make no further award for non-financial losses.

My final decision

For the reasons I've explained, I uphold T's complaint. ClearBank Limited must:

- Pay T 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 T to accept or reject my decision before 15 February 2024.

Emma Szkolar
Ombudsman