

The complaint

A company, which I'll refer to as S complains that ClearBank Limited ('ClearBank') won't refund the money S lost in a scam.

Mrs S, who is a director of S brings the complaint on S's behalf.

What happened

S is represented in this case but for ease I'll refer to S and Mrs S throughout this decision.

Mrs S says that in October 2022 she received a message in her usual thread with ClearBank. The message referred to a transaction to a retailer for £1,989.99 and provided a number to call if the payment wasn't made by S. Mrs S didn't recognise the transaction and, concerned about the safety of the account, called the number provided in the text message. The call was answered by someone who said they were from ClearBank. Mrs S didn't know at the time, but this person was really a scammer.

The scammer asked Mrs S if anyone else could have access to S's account to make the payment to the retailer. When Mrs S said this wasn't the case, she was told S's account had been compromised and that she needed to move the balance of the account to a new safe account. Mrs S was concerned about how she would receive funds she expected from customers and was reassured that funds would automatically be sent to the new account. Mrs S was asked to make some changes in her banking app and told that she'd receive a One Time Passcode (OTP). Mrs S was then asked to transfer £7,094.03 to the new account details provided by the scammer. The transaction was made at 12:34.

After she had transferred the funds Mrs S was put on hold. After around ten minutes the call was disconnected. Mrs S called the number back and was told that ClearBank hadn't contacted her, and the scam came to light.

ClearBank didn't agree to reimburse S's loss. It said it had enough information to identify the fraud by 12:44 on the day the transaction was made but didn't take action to recover funds until the following day. ClearBank was able to recover £65.53 and said that had it acted more promptly it wouldn't have made a difference as the vast majority of S's funds were utilised swiftly after they were credited. But ClearBank recognised it should have contacted the receiving bank sooner and offered Mrs S £50 compensation in recognition of this.

ClearBank noted it wasn't signed up to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and that it's not unusual to make bigger transactions from business accounts. In any event, ClearBank felt that as it was a sophisticated and believable scam a message or call wouldn't have made a difference, especially as Mrs S was on a call to the scammer at the time.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full. She said that the payment request was out of character, so ClearBank ought reasonably to have intervened before processing it. Had it done so, the scam would have been uncovered and S's loss prevented. As the investigator upheld the complaint in full, she didn't comment on recovery, although she said ClearBank's offer of £50 in recognition of its delay in recovering funds was reasonable. Finally, the investigator considered whether S should bear any

responsibility for its loss. She concluded that this was a sophisticated scam involving messages in a genuine thread from ClearBank and that no deduction should be made.

Mrs S, on behalf of S, accepted the investigator's findings but ClearBank did not. In summary, it accepted the payment was unusual and it should have intervened, but said that responsibility for the loss should be shared with S. This was because Mrs S was shown a warning when she created a new payee but chose to continue anyway. In addition to this, Mrs S had previously been shown a warning which said that ClearBank would never ask her to move funds to a safe account, and the confirmation of payee warning contradicts what Mrs S has said about the scammer explaining the safe account was in her name.

The complaint has now been passed to me to decide.

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.

It is accepted that Mrs S authorised the scam payments from her ClearBank account. So, although she didn't intend the money to go to the scammers, under the Payment Services Regulations 2017 and the terms and conditions of her account, Mrs S is presumed liable for S's loss in the first instance. And under the terms and conditions of the account, where a valid payment instruction has been received ClearBank's obligation is to follow the instructions that are provided.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for an electronic money institution like ClearBank to take additional steps or make additional checks before processing a payment in order to help protect its customer from the possibility of financial harm from fraud. An example of this would be if a payment instruction is sufficiently unusual or uncharacteristic for the usual use of the account.

Having considered S's previous account activity I'm satisfied that the scam transaction was unusual and out of character. It was to a new payee, was substantially higher than any previous activity on the account (the largest transaction before was for £2,566) and also nearly drained the account. I'm pleased that ClearBank has now accepted that the transaction was unusual and out of character.

So I consider that ClearBank ought reasonably to have recognised a potential scam risk and provided Mrs S with an appropriate scam warning. I'm satisfied that an appropriate warning or intervention which brought the scam to life would have resonated with Mrs S and prevented the loss from occurring.

Clearbank has told this service that it provided Mrs S with a relevant warning that covers the situation she found herself in and also a confirmation of payee no match warning when the new payee was created. I've carefully considered the messages Mrs S received from ClearBank and can see that there is a message in her thread which was sent on "Saturday" that says ClearBank will never ask her to move funds and that if she received such a call to contact it via the app. I'm satisfied this warning wasn't displayed at the time Mrs S made the transaction to a 'safe' account, as this transaction was made on a Tuesday, so I don't think it's relevant to this complaint. In the heat of the moment, when Mrs S was confident that she was speaking to ClearBank, I don't consider she would have brought this previous message to mind. I'm satisfied that at the time Mrs S set up the scammer as a new payee she was simply provided with a one time passcode.

Overall, I don't think ClearBank did enough to warn Mrs S of the risk of loss to her company. I need to go on to consider whether Mrs S, on behalf of S, should share responsibility for S's loss with ClearBank. ClearBank has said itself that this was a sophisticated scam, with scam messages appearing in a genuine thread from ClearBank and a spoofed telephone number.

I also recognise that at the time Mrs S was cruelly duped she feared losing the balance in S's account and wanted to act quickly to protect those funds. In the circumstances, I don't consider it would be fair to reduce my award to S.

ClearBank has referred to the fact that when Mrs S set up a new payee before making the scam transaction, she was shown a screen that said the recipient's name didn't match their account records. A warning then appeared which advised to only pay the account if Mrs S was sure the details were correct. The warning provided asked that Mrs S only add the recipient if she was sure the details were correct. As Mrs S believed those details were provided by ClearBank I can understand why she didn't take any further action.

I agree that ClearBank should have contacted the receiving bank sooner than it did. ClearBank has received confirmation from the receiving bank that the majority of S's funds were moved on quickly but it's still not clear whether more could have been recovered if ClearBank had acted more promptly. I'm satisfied ClearBank's award of £50 fairly reflects any inconvenience to S as a business.

Overall, I'm satisfied that ClearBank didn't do enough and should put things right as set out below.

My final decision

I require ClearBank Limited to:

- Refund £7,028.50; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of loss to the date of settlement; and
- Pay £50 compensation if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 19 March 2024.

Jay Hadfield
Ombudsman