

## The complaint

Mr I trading as 'M' (a sole trader) complains that ClearBank Limited didn't do enough to protect him against losing money to a scam.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. Mr I was the victim of a scam. On 19 October 2021 he made a payment from his business account with ClearBank to another account, also held with ClearBank. At the time he believed this to be for the legitimate purchase of a vehicle that he'd seen online. But shortly after he tried to cancel his order, the seller ceased all contact and he realised he'd been scammed.

Mr I reported this to ClearBank on 26 October 2021. ClearBank incorrectly treated this as a card payment dispute in the first instance, before looking at it as authorised push payment (APP) fraud. In December 2021 ClearBank told Mr I they hadn't been able to recover any funds.

Mr I complained. ClearBank accepted that an error had been made when he reported the scam. They said but for this error, around £77 could have been recovered. However, as a gesture of goodwill they offered Mr I £2,100 to resolve his complaint. Mr I didn't accept this and wants a full refund. He referred his complaint to our service.

One of our Investigators recommended that the complaint should be upheld. But she only thought ClearBank needed to refund £76.97 plus 8% interest along with £250 compensation for the upset and inconvenience caused by their error. She said it was up to ClearBank if they wanted to still make the £2,100 payment as a gesture of goodwill.

ClearBank accepted this outcome, but Mr I didn't. He asked for an Ombudsman to review his complaint. In October 2023 I issued a provisional decision in which I said:

*"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. But as I'm providing a greater level of detail, I'm issuing this provisional decision to give both sides a further opportunity to comment before finalising my decision.*

*When Mr I instructed his payment for £9,315, believing at the time that this was a legitimate vehicle purchase, this was unusual activity for his account with ClearBank. So whilst ClearBank's first obligation is to follow the instructions provided by their customers, they should also be alert to out of character or higher risk payments with a view to protecting their customers from fraud, scams and the misappropriation of funds. But even if ClearBank had asked some questions and provided warnings about the payment before processing it, in the circumstances of this complaint, I'm not persuaded that would have made a difference.*

*I've seen the details of the communication between Mr I and the seller. And I don't think there was anything obviously fraudulent about it. I've also searched online and haven't found anything from around the time of the payments that might have indicated that it could have been a scam. Plus I think to a certain extent the risks of buying a vehicle online and it being delivered are self-evident. So I can't say that this was a risk that would never have occurred to Mr I. I think it's most likely he would have been reassured by the promises made by the seller and would have gone ahead despite any reasonable level of intervention from ClearBank.*

*But here, as well as being Mr I's bank, ClearBank provided the recipient account. So, I've gone on to consider their actions in relation to that account. I'm satisfied that ClearBank correctly followed their process when opening the recipient account. I don't think there was anything at that time where they reasonably could have known that the account would later go on to be used in connection with a fraud or scam. So, I don't think Mr I's loss could have been prevented through anything to do with the account opening.*

*I've also looked at the activity on the recipient account including the arrival and spending of Mr I's funds. I don't think there were any failings by ClearBank in relation to their monitoring of the account which impacted the loss suffered by Mr I. So this too isn't a basis upon which I can direct them to do more.*

*I've next gone on to look at what happened when Mr I reported his payment to ClearBank. ClearBank accept that initially this was incorrectly recorded as a card dispute. And had that not happened, then £76.96 of Mr I's money would have been recoverable. Based on the evidence I've seen; I agree this is the case and certainly that no more than that amount could have been recovered at the time. So, I think ClearBank should refund this to Mr I along with 8% simple interest (yearly). I also think this error would have caused Mr I avoidable distress and inconvenience. And I agree with our Investigator that taking into account Mr I's personal circumstances and the impact this would have had on him, that £250 compensation is a fair amount.*

*I'm aware that ClearBank, sympathising with Mr I being a victim, offered him £2,100 compensation as a gesture of goodwill. I can't make this award as I don't think there is a reasonable basis upon which to require ClearBank to make that payment. It is a matter for Mr I to take up with ClearBank as to whether that offer still stands.*

*For the reasons outlined above, but subject to any further information I receive from either Mr I or ClearBank, I intend to uphold this complaint in part. I intend to direct ClearBank Limited to pay Mr I £76.97 plus 8% simple interest between the date of loss and the date of settlement. They should also pay £250 compensation for the impact of the service failings described above."*

ClearBank responded to my provisional decision to say they accepted it. Mr I responded with some further comments which I'll address below.

### **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.

Mr I says that ClearBank have now updated the alerts provided in their app. He says had this been in place at the time, he wouldn't have made the payment. I've considered this but I'm not persuaded that is the case. As I've covered above, I've not found any information (available at that time) that might have indicated that the seller wasn't genuine.

Mr I reiterated that he doesn't think ClearBank conducted adequate KYC checks when opening the recipient account. I've seen evidence of the checks they conducted along with a selfie and image of a valid passport provided at account opening. So I don't agree ClearBank didn't do enough when opening the account in question.

Mr I has also said that ClearBank haven't reported this matter to the police. He says that his funds were sent out internationally and he doesn't believe ClearBank have informed the authorities in that jurisdiction either. ClearBank themselves weren't victims, so I wouldn't expect them to pro-actively contact the police in these circumstances. I'm sure that ClearBank will co-operate and share information upon a request from the police that they do so.

Mr I also thinks that ClearBank should do more to chase his money. Beyond the delay I've previously mentioned, I don't think ClearBank are responsible for errors which impacted how much of Mr I's money could be recovered. And the award I'm making compensates him for the consequences of that delay. Further to this, the majority of the activity on the recipient account that spent Mr I's funds was debit card spending, which isn't something that could be pursued for recovery in any case.

Mr I has also referred to the Disability Discrimination Act (DDA). He has described himself as vulnerable and disabled and thinks that ClearBank didn't take this into account. Mr I has submitted medical evidence to support what he's said, and I accept he was vulnerable and disabled at the relevant time.

I've considered this and I agree that ClearBank should treat vulnerable customers with extra care and that, they should make reasonable adjustments for their customers where appropriate. My understanding is that the DDA has been replaced by the Equality Act 2010. But I understand the core point Mr I is making which is that he feels he needed additional support and or adjustments which weren't provided. I've taken the Equality Act 2010 into account when deciding this complaint – given that it's relevant law – but I've ultimately decided this complaint based on what's fair and reasonable. If Mr I wants a decision that ClearBank has breached the Equality Act 2010, then he'd need to go to Court.

I'm sorry to hear of the difficult circumstances and the ill health Mr I has described. But I'm not persuaded this impacts the outcome of this complaint. Our Investigator asked Mr I whether (prior to the payment relevant to this complaint) he'd informed ClearBank of his personal circumstances. Mr I said he had. But when ClearBank said they had no record of being informed of this prior to the complaint being raised, I asked Mr I whether he had evidence of having informed them. Mr I responded to say that ClearBank had failed by not having provision to inform them of disabilities or vulnerabilities during their account opening process.

Given the above, I think its more likely than not that Mr I hadn't informed ClearBank as to his personal situation prior to his payment being made and the subsequent complaint. And I've not seen anything to persuade me that this is something ClearBank ought to have ascertained by themselves. I'm confident that ClearBank have open channels through which their customers can communicate with them.

Ultimately, whilst Mr I is correct that financial businesses should take extra care with vulnerable consumers and comply with the provisions of the Equality Act. Here, I don't think they reasonably could have known about Mr I's personal circumstances without being informed. And so I can't say they've acted unfairly in the circumstances of this complaint. I also don't think Mr I's personal situation means that ClearBank need to refund his loss on that basis.

For completeness, I still think the £250 compensation is fair to reflect the impact of ClearBank incorrectly dealing with his claim in the first instance. The situation was corrected within a reasonable time. And again, I've taken account of Mr I's disability and vulnerability when reaching this conclusion.

I'm sorry Mr I has lost money to a scam, but having considered all he's said, I'm not persuaded to change from the outcome explained in my provisional decision.

### **My final decision**

For the reasons outlined above, my final decision is that I uphold this complaint in part.

Unless they've already done so, ClearBank Limited must pay Mr I £76.97 plus 8% simple interest between the date of loss and the date of settlement. They must also pay him £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 14 December 2023.

Richard Annandale  
**Ombudsman**