

The complaint

Mr M complains that ClearBank Limited won't refund the full amount of money he lost after he fell victim to an 'authorised push payment' ("APP") scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Mr M complains that on 11 October 2023 he made a payment of £3935 to what he thought was a legitimate van purchase.

When the van he thought he purchased wasn't delivered, Mr M raised a scam claim and complaint with ClearBank.

ClearBank looked into the claim and complaint but didn't think it had made an error by allowing the payment to be made. So, Mr M brought his complaint to our service.

Our investigator looked into the complaint but didn't think it should be upheld. Our investigator found ClearBank didn't unreasonably miss opportunities to prevent the payment or recover it.

Mr M didn't agree with the investigator's view, so, the complaint's has been passed to me for 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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm sorry if Mr M lost money to a scam but this doesn't automatically entitle him to a refund from ClearBank. It would only be fair for me to tell ClearBank to reimburse Mr M if I thought it reasonably ought to have prevented the payment or it unreasonably hindered recovery of the funds.

I've decided not to uphold this complaint, for largely the same reasons as the investigator. I'll explain why.

Prevention

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

I'm satisfied that although Mr M didn't intend his money to go to a fraudster, he did authorise the payment. I understand he wouldn't have authorised the payment if he'd known the van purchase was a scam, but ClearBank is expected to process payments that a customer authorises or instructs it to make, and that is what it did. The Payment Services Regulations (PSRs), state that payments are authorised if the payer consented to them and, in this case, I'm satisfied Mr M consented to the payment as at the time, he believed he was making payments for the purposes of a legitimate purchase.

However, where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payments.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider ClearBank should fairly and reasonably:

- Have been monitoring accounts – and any payments made or received – to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Our service has referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

It's not for this service to dictate how ClearBank configures its fraud protection systems. It does have a difficult balance to strike in how it does this to enable it to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. There are many millions of payments made each day and it would not be possible or reasonable to expect a payment provider to check each one. And, in situations where ClearBank do intervene, I would expect that intervention to be proportionate to the circumstances of the payment.

Much like the investigator, I'm satisfied that a payment of this size wouldn't have triggered the fraud prevention system at ClearBank.

But I've also thought about what I think would've most likely happened if ClearBank had decided to flag the payment and had asked Mr M proportionate questions and checks.

Having done so, I'm not persuaded that even if ClearBank had intervened that it would have

unravelling the scam. I'll explain why.

Mr M found the advert for the van on a legitimate third-party selling site. Having checked this site myself, I can see that several vans are listed for sale. So that in itself doesn't look out of place. Mr M also said he thought the emails and communication he had with the seller looked legitimate, he received an invoice for the sale and the company appeared on the Companies House listing.

So, I'm satisfied Mr M would've been able to plausibly answer questions regarding the purchase he had been told about by the scammer and wouldn't have caused any concern with the advisor.

Having considered everything, even if ClearBank had questioned Mr M about the payment, the evidence suggests Mr M was comfortable with who he was sending the money to and only realised the sale was a scam much later when the van wasn't delivered, so I'm satisfied that any intervention that ClearBank may have had wouldn't have worked, as Mr M would've been confident he was sending the money to what he thought was a legitimate van purchase. I'm also satisfied that the plausibility of the answers I think he would more likely than not have given, wouldn't have caused ClearBank any concern.

All things considered, in the individual circumstances of this case, I'm satisfied that any proportionate intervention wouldn't have made a difference to Mr M sending the payment.

Recovery

I've also looked at whether ClearBank took the steps it should have once Mr M contacted them to dispute the payments.

After the payments were made, I couldn't reasonably expect ClearBank to have done anything further until Mr M alleged to ClearBank that he had been scammed.

I can see ClearBank raised the recovery attempt on the day Mr M reported the scam and the receiving bank responded to say the funds were no longer available. So, I'm satisfied ClearBank couldn't have done anything more here.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 March 2024.

Tom Wagstaff
Ombudsman