

The complaint

A limited company Z complains that ClearBank Limited didn't do enough to prevent the loss it suffered when it fell victim to a safe account scam.

Mr N, Z's director has brought the complaint on its behalf and has used a representative when doing so. But for ease of reading, I'll mostly just refer to Mr N, when I mean his company Z or the representative.

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. In February 2023 Mr N was the victim of a safe account scam. He describes how he was called by scammers impersonating his banks. Mr N says around this time he had unrecognised transactions on his account and so was expecting to be called.

Mr N is also the sole director of another business 'E' and it holds an account with bank 'L'. Ultimately, believing his funds were at risk he was persuaded to move money. I've set out a timeline of some of the relevant events below which all took place on 27 February 2023.

Time (approximate)	Amount	Notes
2.44pm	£7,000 payment	From E's account with L to Z's account with ClearBank
2.57pm	N/A	New Payee set up on ClearBank account for recipient account with 'R'.
3.16pm	£7,000 payment	From E's account with L to Z's account with ClearBank
3.17pm	£7,000 payment	From E's account with L to Z's account with ClearBank
3.18pm	£7,000 payment	From E's account with L to Z's account with ClearBank
3.19pm	£7,000 payment	From E's account with L to Z's account with ClearBank
3.20pm	£2,266.34 payment	From E's account with L to Z's account with ClearBank
3.32pm	£37,677.87 payment	From ClearBank to newly set up payee at 'R'.

Mr N says he was told that multiple accounts were under threat and they had all been hacked because they were linked due to payments he'd previously made between them. But when the scammer told him that he needed to transfer money from a further account with another bank 'N' (from where he knew there hadn't been existing payments to link the accounts), he realised this could be a scam. Mr N says he can't remember which, but he called either N or L and they confirmed that moving money to a safe account would be a scam. Mr N then reported this to the banks involved.

ClearBank managed to recover around £30 from R but they declined to provide a further refund. In their complaint response they did acknowledge that there had been some delays in attempting recovery and they offered £75 compensation for this.

Mr N complained to ClearBank, L and R and all three complaints were later referred to our service. In a broad summary one of our Investigators thought that ClearBank ought to have done more to prevent Mr N's loss and he recommended that they pay him around £28,500 plus 8% simple interest. He recommended that R pay the balance up to Mr N's outstanding loss. In response ClearBank offered to pay Mr N half his loss. Mr N declined this offer and provisionally accepted our Investigator's outcome (as long as R would make up the difference). As agreement couldn't be reached, the complaint was passed to me to decide. In December 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 a different outcome compared to that of our Investigator. So, I'm issuing this provisional decision to give everyone a further opportunity to comment prior to finalising my decision.

I'm also aware of the linked complaints about L and R, but this decision solely relates to ClearBank.

It no longer seems to be in dispute that the payment for around £37,600 that Mr N instructed from his ClearBank account was unusual and suspicious. So, I won't go into great detail on this point. But I do agree that this payment would have stood out against the prior account activity. And even for a business account, I don't think in the context of this complaint that expecting ClearBank to have intervened and done more before processing it is unreasonable.

And had ClearBank had a conversation (whether an online chat or a phone call) with Mr N at the time, I think it's highly likely that the scam would have been discovered. Clearly Mr N believed he was already speaking to ClearBank, and the genuine ClearBank would have been aware of this type of scam. So, but for ClearBank's inaction, I think all of Mr N's loss could have been prevented and the money would have remained in his account.

The crux of ClearBank's objection to our Investigator's outcome is that they believe Mr N too should bear some responsibility for his loss due to contributory negligence. I've thought carefully about this. The key question is whether, when setting up and instructing the payment Mr N knew, or reasonably ought to have known something might be amiss but decided to continue anyway.

In support of their position ClearBank have highlighted that Mr N was sent a SMS to set up the new payee prior to processing the payment. And before providing the One Time Passcode (OTP) to enable the setup of the new payee, the SMS said that ClearBank would "NEVER call you asking you to move funds. If you did not initiate this request or have received such a call, please contact us via the [ClearBank] app." They have also said that 'Confirmation of Payee' (CoP) which is a system which allows a sender to check if the name on the account they are paying matches what they expect, showed that there wasn't a match, but Mr N continued and made the payment.

In terms of preventing the loss, I agree that the above steps by ClearBank were insufficient and a greater level of involvement was appropriate. In essence, this is why I'm upholding the complaint. If I were to agree that the CoP and SMS warning was enough, then ClearBank

wouldn't have to make a payment at all. But these factors can still be of relevance when thinking about Mr N's conduct and potential responsibility for his own loss.

Mr N set up the new payee at around 2.57pm which is when he received the SMS warning. He then went on to make several of the transfers from L to ClearBank with the last being made at 3.20pm. There was then a further 12 minutes before he instructed the onward payment to the account at R. I appreciate that a safe account scam relies in part on creating a sense of urgency and fear at the risk of losing money to gain compliance from the victim.

But in the circumstances here, the events didn't happen in such quick succession that I think Mr N would have been unable to take in the information presented to him as a result of being rushed and pressured by the scammer. There was a 13 minute gap between the initial payment from L to ClearBank before the new payee was set up. There was a similar gap between that happening and the further payments from E's account with L. And again a break between the final payment and the funds being sent to the account with R.

I also know that Mr N must have seen the SMS referenced above as it included the OTP that was required to set up the new payee. And in the context of my comments about the speed the events unfolded, I think its most likely he would have seen within it the warning that ClearBank would never call and ask him to move funds (something he believed was happening at the time).

The SMS, in my opinion, is explicit that ClearBank would 'NEVER' call and instruct the movement of funds. So whilst I accept that Mr N believed he was speaking to a representative of his bank, and he thought he was being asked by ClearBank to move his funds, he'd also received an SMS from them stating clearly that this was something they would never do. I don't think it is an unreasonable expectation for this to have been noticed and challenged.

I appreciate Mr N says he moved to the UK in 2019 and so was less familiar with the banking system here and I've taken that into account when thinking about this complaint. But overall, I think it's most likely Mr N saw ClearBank's SMS, and I'm not persuaded he rushed through the setup and payment so quickly that he wouldn't have taken it in. And as he didn't then question the significant difference between what the scammer on the phone was telling him and the information in the SMS, I think he too is partly responsible for his own loss. Had Mr N followed what he was told in the SMS and contacted ClearBank within their app, I think it's likely his losses would've been prevented.

So, I intend to make a reduction in award of 50% to fairly reflect this as I think both ClearBank and Mr N each could have prevented the entire loss if they'd done as I think reasonably could've been expected in the circumstances.

By the time Mr N contacted ClearBank to report the scam, only the £33.42 that was later returned remained in the account with R. So, nothing ClearBank did or didn't do in response to that notification impacted on the amount recovered. ClearBank offered £75 compensation for the impact of the delay which they said was between them being notified at 4.28pm and not contacting R until 6.00pm. If that compensation hasn't already been paid, I'm not intending to direct that it needs to be. The complainant here is Z which as an entity can't feel distress. And I'm not persuaded that material inconvenience was caused to Z such that a compensation award is appropriate here.

Putting things Right

The payment that Mr N sent from Z's account that I think ClearBank reasonably ought to have prevented was for £37,677.87 and the recovered funds were £33.42 which leaves an

outstanding loss of £37,644.45. And after a 50% reduction for contributory negligence I intend to direct that ClearBank Limited pays Z £18,822.23. I also intend to direct that 8% simple interest should be added to this amount, to be calculated between the date of loss and the date of settlement to compensate Z for being without access to funds it otherwise would have had."

Both Mr N and ClearBank responded and said that they accepted my provisional decision. Mr N made a further comment about the tax situation 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.

As both parties accepted my provisional decision, I see no reason to deviate from the outcome explained above. Mr N asked if ClearBank could make him aware of any tax implications from the interest award.

It isn't for ClearBank to provide tax advice to Z in these circumstances. However, if ClearBank deduct tax from the interest award, upon a request from Mr N they should provide Z with a certificate explaining how much tax has been taken, so Z is able to claim this back from HMRC if it is appropriate to do so.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint. ClearBank Limited must take the actions set out at 'Putting things Right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Z to accept or reject my decision before 14 February 2024.

Richard Annandale
Ombudsman