

The complaint

V is unhappy that ClearBank Limited won't refund money it lost as part of a scam.

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.

- It seems Mr V took steps under the guise payments would be made to a safe account. While it's accepted this was part of a scam, I'm satisfied the payments would be considered authorised for the purposes of the Payment Services Regulations 2017. This means the starting position is that V is liable.
- But there are some situations where we believe that banks – taking into account relevant rules, codes and best practice – ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If ClearBank failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.
- Having considered the circumstances carefully, I think ClearBank ought to have been concerned by the first disputed payment. I'll explain why.
- Three new payees were set up in short succession: at 17:46, 17:54 and 17:54. ClearBank hasn't confirmed what the result of 'Confirmation of Payee' would've been. But given the payees were variations of V's name, it's likely these all would've been 'no match'.
- ClearBank argue the addition of a payees shouldn't be seen as a red flag. It says an added payee doesn't mean a payment will be made to it, and that overall, this wouldn't require an intervention.
- Firstly, I find the argument that payees aren't created for payments difficult to accept – I'm not sure why someone would otherwise create them. Moreover, while I recognise ClearBank is unlikely to have intervened with the creation of new payees, I'm satisfied that their quick additions with consecutive no match results formed part of an overall worrying picture that V might be at risk of fraud. So that when a payment was then made to one of these payees, I think ClearBank ought to have stepped in.
- To be clear, my finding doesn't solely rely on the addition of new payees. I've also considered the photo Mr V has provided of his phone showing three payments were initiated for the full balance of the account to each of the new payees. This correlates with the account logs, which show several entries relating to 'pay flow' before the two

successful payments.

- ClearBank suggest Mr V fabricated this evidence because the payment requests would've expired quickly, so he couldn't have taken photos at the time they show. This is a very serious allegation to make, but it's not provided any evidence to support it. And overall, I don't find these photographs suspicious – I note they're photos of his phone, which I think would be harder to manipulate than a screenshot.
- In saying that, I've thought about ClearBank's submission that the reason for the 'pay flow' entries on the account logs is likely because the fraudsters would've created a false sense of urgency that V was being defrauded, and Mr V would've likely been checking for fraudulent payments.
- But the account logs relating to 'pay flow' refer to payments being selected, which wouldn't exist in the scenario ClearBank has proposed. Indeed, the entries look very similar to those for the successful payments, except that the latter each have an entry relating to them being successful.
- So I remain persuaded that the photo and account logs support there was attempted payments, which for some reason didn't go through. This is in keeping with Mr V's consistent testimony since he raised the complaint.
- It follows that, on the balance of probabilities, I'm persuaded there were attempted payments beforehand – and I think these too added to the overall picture that something was amiss.
- I've finally considered how these payments were initiated from ClearBank's web app, which, from my experience of dealing with similar cases, fits with a prevailing pattern of fraud from the time. Indeed, I understand changes have since been made to help stop this type of fraud taking place.
- Taking this all into account, while I accept the value of the payments in isolation wasn't a cause of concern, given the preceding activity and overall context, I think ClearBank ought to have been worried when the disputed payments were attempted that V was at risk at fraud.
- Had ClearBank intervened appropriately as I think it should've done, I'm satisfied it's likely the scam would've unravelled, and V's losses would've been prevented. Afterall, if they'd spoken to Mr V, it would've become clear that ClearBank weren't in fact on the phone to him and V's money was safe.
- It follows that I consider ClearBank ought to refund V for its losses from the disputed transactions alongside 8% simple interest per year to compensate it for the time it's been out of pocket.
- In saying this, I've considered whether V ought to be held partly to blame for its losses. But I can see how Mr V trusted the caller, given how the number appeared and the information they were able to recall about V's account. And overall, I can understand how he went through the steps for these payments, given his belief he was keeping V's money safe. So I've not made a deduction for contributory negligence.

My final decision

For the reasons I've explained, I uphold V's complaint. ClearBank Limited must:

- Refund V the disputed transactions, less any amount recovered or already refunded.
- Pay 8% simple interest per year on the amount from the date of the disputed transactions to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask V to accept or reject my decision before 21 March 2024.

Emma Szkolar
Ombudsman