

## **The complaint**

Mr E complains that Guaranty Trust Bank (UK) Limited (“GTB”) hasn’t protected him from losing money to a scam.

## **What happened**

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, Mr E has explained that in March 2023 he made a payment of £68,000 from his GTB account as a result of a scam. Mr E subsequently realised he’d been scammed and got in touch with GTB. Although £48,015.67 was recovered from the recipient account held with a bank I’ll call M, ultimately GTB didn’t reimburse Mr E’s remaining loss (£19,984.33), so Mr E referred his complaint about GTB to us. Our Investigator couldn’t resolve the matter informally, so the case has been passed to me for a 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.

Having done so, I’ve decided to uphold this complaint for materially the same reasons as our Investigator.

In broad terms, the starting position at law is that a payment service provider like GTB is expected to process payments that a customer authorises, in accordance with The Payment Services Regulations and the terms and conditions of the account. And in this case, I accept this was an authorised transaction even though Mr E was tricked. So, although Mr E didn’t intend the payment to be lost to scammers, Mr E is presumed liable in the first instance. However, this isn’t the end of the story. Good industry practice was that GTB ought reasonably to have been on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment instruction, I would expect it to intervene in a manner proportionate to the risk identified.

In this case Mr E’s payment was for a very significant amount indeed (£68,000) and to, as I understand it, a new payee. We therefore asked GTB for some information about this, to assess whether it acted reasonably in its dealings with Mr E at the time – for example, whether GTB ought reasonably to have paused the payment (before allowing it through), pending enquiries with Mr E to check everything was in order and that he wasn’t at risk of financial harm from fraud or a scam; and whether such appropriate intervention would have most likely prevented Mr E’s payment and therefore his remaining loss (£19,984.33). But GTB hasn’t responded to us at all. So, after GTB had reasonable time to put its case but didn’t, our Investigator explained why she thought the complaint should be upheld. When GTB didn’t respond to the Investigator’s assessment, we emailed GTB to let it know the case would therefore be passed for an Ombudsman’s decision, since which time GTB still hasn’t responded at all.

I’m therefore left to decide this case with the same information the Investigator had, which includes no information received at all from GTB. And having done so, I agree with the

outcome recommended by our Investigator. I understand Mr E made the payment as a result of an email from his conveyancer being intercepted by a fraudster and altered such that he was tricked into paying the fraudster's account and not the conveyancer's. I've seen nothing to indicate Mr E had paid the fraudster before, nor have I seen information suggesting a payment of £68,000 from Mr E's GTB account was usual or characteristic for this account. So the information suggests to me that GTB reasonably ought to have paused the payment before allowing it through, pending enquiries with Mr E, to check everything was in order and that he wasn't at risk of financial harm.

So I think GTB ought reasonably to have had an appropriate discussion with Mr E before it allowed his payment through, which I've not seen evidence to persuade me happened. As part of this, I would reasonably expect GTB to have asked Mr E who the payment was for, what the payment was for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam. I have no reason to think, had it done so appropriately, that Mr E wouldn't have told it what he's since told us: that he'd received an email from his conveyancer asking for payment, and that the email asked him to make the payment to the bank account detailed in the email. But I don't think this ought to have satisfied GTB, given what it reasonably ought to have known about scams like this: I think GTB ought to have realised that if there was a fraud or scam risk here, it might most likely come from Mr E paying the wrong account, including through an email interception scam. So I don't think it's unreasonable to say GTB ought to have warned Mr E of this and advised that he really ought to speak to the conveyancer before making the payment, to check the bank account details were correct.

This was a large payment and I've seen nothing to persuade me Mr E wouldn't have fully taken this on board and consequently then spoken to his conveyancer before making the payment, at which point I have no doubt the scam would have been uncovered and Mr E wouldn't have made the payment.

Our service is entitled to take account of the failure by a party to provide information we've requested. And here, given the nature of the information requested from GTB, the reasons why, and the time it has had to provide this, I think it's fair for me to draw inferences from GTB's failure to respond. Such that, based on the information presented and taking into account GTB's failure to respond to our requests and the Investigator's assessment, the only conclusion I can fairly and reasonably reach is that I think it's likely GTB unreasonably failed to prevent this fraud from Mr E's account and prevent his loss. I've thought about whether Mr E should bear some responsibility for his remaining loss by way of contributory negligence (which might justify a reduction in compensation). But our Investigator didn't recommend a deduction for this. GTB hasn't made any arguments on this. And I've seen nothing that persuades me Mr E's actions were unreasonable, or that this is anything other than a case where what I'd reasonably have expected from GTB ought to have prevented Mr E's remaining loss of £19,984.33. I'm satisfied therefore that GTB should refund Mr E £19,984.33 (which is the difference between the payment of £68,000 and the amount recovered of £48,015.67). To compensate Mr E for having been deprived of this money from the date he lost it, GTB should also pay Mr E interest on this amount calculated at 8% simple per year from the date of the payment to the date of settlement.

### **My final decision**

For the reasons explained, I uphold this complaint and I direct Guaranty Trust Bank (UK) Limited to pay Mr E:

- £19,984.33; plus
- interest on this amount calculated at 8% simple per year from the date the payment was made to the date of settlement (if GTB deducts tax from this interest, it should

provide Mr E with the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 1 May 2024.

Neil Bridge  
**Ombudsman**