

The complaint

This complaint has been brought by a limited company I'll refer to as "R". Mr A, as a director of R, is representing the company. The complaint is about ClearBank Limited not refunding the money R lost in a scam.

What happened

R is a real estate business. In summer 2023, R was due to pay a large sum to its solicitors. But the solicitors' email was intercepted by scammers, who provided fake account details to pay. R's solicitors had warned it about this sort of scam and required that R call them first to verify any payment, but R did not do so. R sent an initial £100 to the scammers. Then a couple of days later, it sent the scammers around £18,000. The scammers claimed this wasn't received and asked R to pay them again. After four days of back and forth, R spoke to the real solicitors and realised it had been scammed.

R reported the matter to ClearBank, who raised this with the receiving bank and chased them. But the receiving bank only recovered £1.59.

Our investigator looked into things independently and didn't uphold the complaint. R's representatives appealed, so the complaint's been passed to me to decide.

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 understand that Mr A fell victim to a scam, which has had a serious impact for R, and so both he and the company have my sympathy. I appreciate this can't have been an easy matter to face, and I appreciate why Mr A feels that R's money should be returned. It's worth keeping in mind that it's the scammer who's primarily responsible for what happened, and who really owes R its money back. But I can only consider what ClearBank did. Having carefully considered everything that both sides have said and provided, I can't fairly hold ClearBank liable for R's loss. I'll explain why.

It's not in dispute that the payments involved were authorised. So although Mr A didn't intend for the money to go to a scammer, under the Payment Services Regulations, R is liable for the loss in the first instance. And broadly speaking, ClearBank had an obligation to follow R's instructions – the starting position in law is that banks are expected to process payments which a customer authorises them to make.

ClearBank should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. But a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. I've thought carefully about whether ClearBank should have done more in R's case.

However, I don't think the payments involved were so unusual or out of character that ClearBank needed to intervene. The second payment – of about £18,000 – was indeed large. And it might have been notable if made from, say, an individual's personal account. But R was a business dealing in real estate, and this was a business account that was equipped to deal with payments of this sort of size. It was in the nature of R's business to make payments of this size, and indeed it had sent and received similar or larger amounts before. ClearBank would've been aware of the nature of R's business, and would've expected it to be making these sorts of payments. So I don't think the payments were out of character for R. And I could not fairly expect ClearBank to block or probe every payment of this size for a real estate business like R – that would be impractical for both sides. I've not found any other reason why ClearBank should've intervened on this payment, either. I don't find it to be particularly significant that this payment reference had been used before – for example, businesses commonly deal with multiple parties on the same project.

Next, I've considered what ClearBank did to try to recover R's money after they were informed about the scam. ClearBank notified the receiving bank that same afternoon, and proactively chased them. But the receiving bank was only able to recover £1.59, which it returned eleven days after the fact. And I'm afraid there wasn't much more ClearBank could reasonably do here. Unfortunately, by the time Mr A discovered the scam and reported it, it had been four days since the last payment. And it's common for scammers to move on the money as quickly as possible, before the victim realises what happened.

So while I'm very sorry to hear about what happened to R and Mr A, I don't think ClearBank should be held responsible for the loss. And so I cannot fairly tell ClearBank to refund R's money in this case.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 18 April 2024.

Adam Charles
Ombudsman