

The complaint

A company, that I'll call J, complains that ClearBank Limited won't fully refund its losses from an impersonation scam.

Mr B, a director of J, brings the complaint on J's behalf.

ClearBank partners with Tide to provide J's account. For ease, I'll only refer to ClearBank in the decision, as it's ultimately responsible for the complaint.

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.

Having done so, I've reached the same outcome as our investigator for these reasons:

ClearBank agreed to refund 50% of J's losses from the scam it fell victim to, as it accepted it ought to have intervened with the payments before it processed them. But it refused to refund J in full, as it considered J was equally to blame for its losses, given Mr B's behaviour during the scam.

The starting point for contributory negligence is considering what a reasonable person would be expected to have done in the circumstances – and whether Mr B's actions fell below that. Having considered the matter carefully, I can understand how he was convinced by the scam, and I don't think he acted unreasonably. I've noted:

- Mr B joined a call with one of J's clients, who I'll refer to as 'R', alongside a fraudster posing as HSBC. They told him that fraudsters had transferred R's money to J's account. That was because J's account wasn't secure, and the fraudsters could target both J's and R's money from there. To stop this, he was told he'd need to transfer R's money to a new safe account, as well as transfer J's money to a new account.
- I'm mindful Mr B would've understandably relied upon R's trust in the caller and lack of concern over their legitimacy. And, given that R's money had genuinely been transferred to J's account, I don't think Mr B unreasonably believed he was speaking with HSBC and that he needed to follow their instructions.
- ClearBank submit Mr B should've been concerned with taking instructions from 'HSBC', as it wasn't who J banks with. But Mr B did question this. The fraudster explained they were on a 'live chat' with Tide, and that financial institutions have mechanisms to work together in the event of fraud. I think that's a plausible sounding

explanation in the heat of the moment, given that a reasonable person isn't a fraud expert.

- I've also considered the warnings ClearBank submit Mr B would've seen. He doesn't recall these, but ClearBank has provided screenshots of what these would've looked like – they said the account name of the recipients closely matched their account records. While it wasn't a perfect match, I can understand why it didn't stand out to Mr B. And given the wider context – that he believed R's and J's money was actively being targeted by fraudsters – I don't think it meant he acted unreasonably for going ahead with setting up the new payees and making the payments.
- I've finally noted ClearBank's question about why the urgency during the call is relevant, as most scams operate on this basis. But the reason fraudsters rely on this tactic is the effect pressure and stakes have on a person's decision-making – for example, it tends to make it harder to stop and think, or ask further questions. So I remain persuaded that the false sense of pressure and the risk of losing money is a relevant factor in judging Mr B's actions.

Taking this all into account, I've not been persuaded that J is also to blame for its losses. So ClearBank needs to put things right in full – by refunding the total of J's losses from the disputed payments (£32,540.95), less any amount it's already recovered or refunded. ClearBank must also pay 8% simple interest per year on this amount to compensate J for the time it's been out of pocket.

My final decision

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

- Pay J the total its losses from the disputed payments (£32,540.95) less any amount already recovered or already refunded.
- Pay 8% simple interest per year on this amount, from the date of the disputed payments to the date of settlement (less any tax lawfully refunded).

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 26 September 2024.

Emma Szkolar
Ombudsman