

The complaint

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

Mr T, I Ltd'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 T, when I mean his company I Ltd or the representative.

I also understand I Ltd's account is operated through a platform provided by ClearBank's business partner under the Tide brand. Again, for ease of reading, I'll refer to ClearBank throughout, but where relevant the reference should be understood as meaning Tide.

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 January 2023 Mr T was the victim of a 'bank impersonation' / 'safe account' scam. Mr T says he'd received a text message from ClearBank asking him to call regarding an unrecognised transaction on his account. He called the number contained in the text message and spoke to, who he at the time thought, was ClearBank's business banking team. Ultimately, believing the funds in his account were at risk, Mr T was persuaded to move the money to a new account. Mr T made two payments, totalling £31,812.72 from his account, taking his account balance to zero. Mr T says he was then asked to delete his ClearBank App and set it up again, and after doing so, when he logged back into the App the new account wasn't showing as promised. This is when Mr T realised he'd likely fallen victim to a scam. Mr T informed ClearBank the same day.

Having looked into things, ClearBank said that it didn't miss any opportunities to intervene and that it hadn't done anything wrong in regard to the fraud which occurred on Mr T's account. However, it did acknowledge that there had been some customer service failings (delays in communication and the general support given). It offered a compensatory award of £100 for the distress and inconvenience. It was also able to recover and return to Mr T a sum of £13,092.18.

Unhappy, Mr T referred the matter to our service. After bringing his complaint ClearBank made an offer to refund Mr T 50% of the outstanding amount (£9,360.27) plus 8% simple interest per annum from the date of the payments to the date of settlement. Mr T did not accept ClearBank's offer and asked that our service look into things. In a broad summary one of our Investigators thought that the payments were unusual, and that ClearBank had missed opportunities to discuss the payments Mr T was making in more detail. She thought had it intervened and asked more appropriate questions; the scam would have been prevented and Mr T wouldn't have lost any of his money. She also concluded that ClearBank in its capacity as the recipient bank had also missed several opportunities to prevent Mr T's loss. She recommended that ClearBank pays Mr T's remaining loss, which is around £18,700 plus 8% simple interest. And she thought that the compensatory award of £100 was fair, so it didn't need to pay anything further in that regard.

As agreement couldn't be reached, the complaint was passed to me to decide.

On 3 April 2024 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 the same outcome as our Investigator. But as I'm providing additional reasoning and my interest award differs slightly, I'm issuing this provisional decision to give everyone a further opportunity to comment prior to finalising my decision.

I'm also aware part of Mr T's complaint relates to ClearBank's actions as the recipient payment service provider (PSP), and is something our Investigator has also commented on, but my intended decision here relates solely to ClearBank's actions as Mr T's PSP in the arranging and sending of the payments, and its response when notified (by Mr T) that he'd been the victim of a scam. I'll consider ClearBank's actions as the recipient PSP separately, if Mr T would still like me to.

Mr T argues the payments ought to have flagged as they weren't in line with the general operation of his account. ClearBank have said (after the complaint had been referred to our service): "Having reviewed the spending pattern on the account, I do agree that an intervention from [Tide] was warranted at the time the transactions were being made considering that the first payment was substantially higher in amount compared to the previous largest transaction and the payments were also made in relatively quick succession and drained the entire account balance." It no longer seems to be in dispute that the first payment for £18,122.35 that Mr T made from his 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 T at the time, I think it's highly likely that the scam would have been discovered. Clearly Mr T 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 T'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 it believes Mr T 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 T 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 the text message it sent to Mr T containing the One Time Passcode (OTP) to enable the setup of the new payee, also contained a warning, clearly outlining that ClearBank would never ask him to move funds from his account. It has shared with our service a screenshot of the text message which says: "[Tide] will 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 [Tide] App." ClearBank 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 T continued and made the payments.

I agree with Mr T that the above steps by ClearBank were insufficient, and a greater level of involvement was appropriate, and importantly from a causation perspective would've made a material difference in preventing Mr T's loss. In essence, that being the basis for why I'm intending on upholding this complaint. If I were to agree that CoP and the text message warning were enough, then ClearBank wouldn't have to refund Mr T's remaining loss at all. But these factors can still be of relevance when thinking about Mr T's conduct and potential responsibility for his own loss – and something I must consider when thinking about what's fair and reasonable.

Should Mr T bear some responsibility for the loss?

Mr T says that he wasn't concerned by the warning ClearBank shared in its text message which contained the OTP for setting up the new payee details. He didn't think the text message warning was applicable to him, as he'd not been called by ClearBank asking him to move money. The situation Mr T found himself in was that he'd called ClearBank, following receipt of a text message from them about a payment he didn't recognise. The message was received within the same text message thread, in which, he'd previously received genuine messages from ClearBank. Mr T has also explained that at the time, he was told to do an online search of the number he'd called, which he did. The search results took him to a website that appeared to be legitimate and affiliated with ClearBank.

I agree that the message clearly states that ClearBank would never call and ask its customer to move money. But ClearBank hadn't called Mr T, so I don't think his conclusion that this didn't apply to his circumstances was unreasonable. The text message appeared in the existing thread and Mr T took some steps to verify this, so I don't think it can be said he was negligent such that a reduction is appropriate on the basis of the text warning. I don't think that based on how the scam had unfolded up to this point I can fairly and reasonably say that at this stage Mr T ought reasonably to have been alerted to the possibility that something might've been amiss.

With respect to the CoP mismatch warning, there has been conflicting information about whether a warning was displayed. Mr T's testimony is that he can't recall seeing a warning. However, he has confirmed that he entered his own name as the payee. ClearBank initially said a warning was shown and it provided an example of what Mr T would've seen. In its later submissions it said there wasn't a CoP mismatch. I queried this again with ClearBank. It responded by sharing a report which showed that when Mr T set up the new payee a full CoP mismatch was displayed and acknowledged by Mr T. ClearBank say that while Mr T has stated that he does not remember seeing a CoP mismatch when making the payments, it considers this to be anecdotal evidence based on his recollection of events that took place over a year ago, whereas the report it has provided is contemporaneous – the implication being that greater weight ought to be placed on this. ClearBank has also shared evidence that shows that the recipient account wasn't held in Mr T's name.

So having considered all the available evidence, I agree with ClearBank, that its most likely, that a CoP mismatch warning was displayed when Mr T set up the new payee. But this doesn't automatically equate to a reduction in the award payable. I'm still required to consider if in the specific circumstances of this case it can reasonably be concluded that Mr T's actions, or his failure to act amounts to negligence such that I consider a reduction in the award to be fair.

Mr T from the outset has explained how sophisticated and believable the scam was. The scammer knew information about Mr T that only his bank would've known. Mr T was abroad at the time, again something else the scammers knew which Mr T says he'd not publicly shared. The text message he'd received about the unrecognised transaction was in the same thread as other genuine text messages from ClearBank. When Mr T called the number contained in the text message, he was greeted with a recorded ClearBank business banking message (as he would have if he'd called the genuine ClearBank). He says he was passed to different people, and all the interactions he had with the scammers were professional with them providing plausible answers to Mr T about what he needed to do and why. Mr T says if he was asked to rate the service he'd received, he would've given it "five stars". And from the sort-code, Mr T knew the money was being transferred to another ClearBank account.

All of the above fed into, and added to, Mr T's genuine belief that he was liaising with ClearBank. Plus given the very nature of safe account scams is to instil worry and create a sense of urgency about taking action to protect the money in the account, I can see why Mr T took the actions he did.

Mr T's testimony has been relatively consistent and appears to be sincere. So I don't think Mr T's response that he can't recall receiving a CoP mismatch warning is in anyway a deliberate attempt to conceal information, or Mr T being dishonest about his recollection of the events. I genuinely think given the passage of time, he simply can't recall seeing a CoP mismatch warning when he was asked by the scammers to set up the new payee details, nor does he remember what the scammers might've said about this at the time. I've thought about this, and given that, on balance, it's not uncommon in this type of scam for plausible explanations to be provided for a CoP mismatch, I think this would've most likely happened.

So overall, I don't think I can say that Mr T's actions were careless and/or reckless, and I'm currently not persuaded that in the circumstances of this case, when sending the payments Mr T knew, or reasonably should have suspected there was a potential problem but continued despite this such that a reduction in award would be appropriate here.

By the time Mr T contacted ClearBank to report the scam, only the £13,092.18 that was later returned remained in the recipient account. So, nothing ClearBank did or didn't do in response to that notification impacted on the amount recovered from the recipient account.

ClearBank offered £100 compensation (which Mr T has accepted on I Ltd's behalf) for the distress and inconvenience caused by its customer service failings (delays in communication and general support). The eligible complainant here is I Ltd which as an entity can't feel distress. And in the absence of any evidence to suggest otherwise, I'm not persuaded that material inconvenience was caused to I Ltd such that a compensation award is appropriate here.

Putting things right

Overall, having considered the matter carefully, I think ClearBank reasonably ought to have prevented I Ltd's full loss, so it should refund £31,812.72 (less any sum which has already been recovered and returned).

As I Ltd has been deprived of the use of this money for that period of time. I think that ClearBank should also pay 8% simple interest per annum on the total sum of £31,812.72 but this would be as follows:

For the sum awarded, it should be 8% simple interest per annum from date of each payment to the date of settlement.

For any sum which was recovered and returned, it should be 8% simple interest per annum on that amount between the date of each payment and the date those funds were returned.

If ClearBank considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell I Ltd how much it's taken off. It should also give I Ltd a tax deduction certificate if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate."

I asked both parties to send me any further comments and/or information they want me to consider.

Mr T responded to say he accepts my provisional decision.

ClearBank maintained its position that the redress being offered to Mr T should be 50% of the outstanding loss rather than the full amount. It had no comments regarding the interest being offered and agreed with this aspect of the redress. It also pointed out the following statement in my provisional decision: *"If I were to agree that CoP and the text message warning were enough, then ClearBank wouldn't have to refund Mr T's remaining loss at all."* It stated that this was *"simply incorrect"* and *"did not make sense"*, and that ClearBank was not trying to argue that Mr T has been grossly negligent as to absolve itself of any responsibility to reimburse Mr T in part. It expresses that it has acknowledged that an opportunity to intervene and prevent at least some of the losses incurred by Mr T was missed, but crucially wants to stress that Mr T also missed several opportunities to protect the funds by ignoring the warnings he received. This forming the basis for why it believes the responsibility should be shared rather than being placed entirely on either party.

Now that both parties have had an opportunity to comment, I can go ahead with my final 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.

I'd like to start by clarifying that I wasn't in anyway suggesting that ClearBank are trying to argue that Mr T has been grossly negligent as to absolve itself of any responsibility to reimburse Mr T in part. My provisional decision acknowledges ClearBank's acceptance that it could've done more and sets out that the crux of its objection is that it believes Mr T too should bear some responsibility for his loss due to contributory negligence. The context of the statement ClearBank has highlighted was to explain that if I thought CoP and the text message warnings were a proportionate intervention, then I couldn't fairly ask ClearBank to do more. And as the sentence which followed said *"these factors can still be of relevance when thinking about Mr T's conduct and potential responsibility for his own loss – and something I must consider when thinking about what's fair and reasonable."*

So whilst I've considered what ClearBank have said, I maintain for the reasons set out above, that in the circumstances of this case, it wouldn't be fair to reduce the award due to contributory negligence. And overall, I'm not persuaded to deviate from the outcome explained in my provisional decision.

Putting things right

To put things right ClearBank Limited must take the following actions:

- Pay I Ltd £31,812.72 (less any sum which has already been recovered and returned) together with 8% simple interest per annum from date of each payment to the date of settlement.
- For any sum which has been recovered and returned, pay I Ltd 8% simple interest per annum on that amount between the date of each payment and the date those funds were returned.

If ClearBank considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell I Ltd how much it's taken off. It should also give I Ltd a tax deduction certificate if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold this complaint and direct ClearBank Ltd to take the actions outlined in the "Putting things right" section of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask I Ltd to accept or reject my decision before 12 June 2024.

Sonal Matharu
Ombudsman