

The complaint

M, a limited company, complains that ClearBank Limited ("ClearBank") hasn't refunded monies it says it lost as the result of a scam.

The director of M, Mr A, is bringing the complaint on its behalf via a claims management company. So, in the main, I'll refer to Mr A throughout.

What happened

Mr A has explained that a friend told him about an investment opportunity in the buying and selling of gold jewellery - in which his friend had already received returns.

Mr A and his friend travelled to meet with the two people he believed were running the investment. He said he met both in person, though at different times and locations. He met someone I'll refer to as Mr B at their house and another I'll refer to as Mr C, at their place of business, which I'll refer to as D.

By his own admission Mr A said he didn't ask many questions as he believed the investment already had a track record. But said he was given assurances the investment would be safe. He understood things to work as follows; his investment would be paid into D's account and that he would receive 3% returns monthly which were to be collected in cash from Mr B.

Mr A said he received a contract via a messaging app and due to disappearing messages no longer has this to provide to either ClearBank or the Financial Ombudsman, or any other related communications for the same reason.

He decided to invest and initially transferred £1 on 13 March 2022 to D, later that day he transferred £50,000 to D and a further £50,000 to D on 14 March 2022.

Mr A said he received the expected 3% monthly return for two consecutive months but can't remember which months these were. This totalled £6,000. Following this Mr A said he invested a further £85,000. It's not suggested this was made from the same account or via ClearBank. Mr A has complained about the transactions totalling £100,000, and the associated £94,000 loss, and not the further investment, nor the original £1 transfer.

Mr A said he was contacted by phone and told there was a problem with the investment. He and his friend travelled to meet with Mr B at their house. Mr A said he was informed the issue had arisen because of Mr C's business partners and he was given assurances that the money would be returned but he wasn't sure he was being told the truth.

At this time Mr A carried out some research and found that D's record on Companies House noted it was being struck off and that Mr B owned a company that seemed to deal with trading gold for the purpose of making jewellery.

Once notified of the issue with the investment, Mr A said Mr B continued to take his calls but later stopped. Mr A has reported the matter to the police who are carrying out a fraud investigation.

Mr A raised the matter with ClearBank in October 2023 and explained what happened. On the same day ClearBank contacted the beneficiary bank to try and recover the funds Mr A says he'd been scammed. Regrettably no funds remained in the beneficiary's account.

Mr A felt ClearBank could have done more to prevent the loss and so he made a complaint. In part he felt the transactions were out of character for his account, and this should've alerted ClearBank to him being at risk of financial harm from fraud – thereby prompting it to question Mr A about the transactions before processing them. Mr A said had ClearBank done this he would not have completed the transactions.

ClearBank investigated the matter and agreed with Mr A that the payments being complained about were uncharacteristic when compared to the usual pattern of payments made from the account. It accepts it should have stopped the payments and discussed them with Mr A. ClearBank said it doesn't believe this would have made a difference though as the investment was recommended by a friend who was already receiving returns, he'd met the investors and received a contract. It decided even if it had intervened Mr A would have continued to make the payments. It didn't uphold his complaint or refund the monies.

Unhappy with ClearBank's response, Mr A raised the matter with the Financial Ombudsman Service. One of our Investigators looked into the complaint and didn't think it should be upheld. In summary, our Investigator wasn't persuaded M had been the victim of a scam but rather the investment had gone wrong and that the matter is a civil dispute between M and D. They based this on evidence the Financial Ombudsman has seen from the receiving back which appears to show the funds being used as they were intended and therefore, they could not say M was deceived about the true intention of the payments.

Mr A responded and provided evidence of medications he was taking prior to the scam for his mental health and evidence from the police which stated there's an on-going fraud investigation. Mr A felt the fraud investigation was enough to say the investment was a scam. Our Investigator acknowledged there's an on-going police investigation regarding the matter, but they could not conclude this meant there was definitely a scam.

Mr A further stated neither ClearBank or the Financial Ombudsman appeared to consider the Contingent Reimbursement Model (CRM) Code. And whilst he acknowledged it doesn't apply here, he felt it was best practice to apply it. Our Investigator confirmed they hadn't considered the transactions under the CRM code as they're not covered by it.

As an agreement could not be reached, the complaint has been passed to me for a 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'm sorry to hear of what's happened to Mr A, and I understand why he feels the money should be refunded. However, I don't find that ClearBank has acted unfairly in declining Mr A's claim and deciding not to refund the money. I'll explain why.

I would like to say at the outset that I've considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Mr A (M) was the victim of a scam and if ClearBank is responsible for the loss he claims to have suffered.

Where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

In line with the Payment Services Regulations 2017, consumers are generally liable for payments they authorise. ClearBank is expected to process authorised payment instructions without undue delay. But they also have long-standing obligations to help protect customers from financial harm from fraud and scams. Those obligations are however predicated on there having been a fraud or scam. And so, it would only be reasonable for me to consider whether ClearBank is responsible for the loss Mr A claims to have suffered if, indeed, he has been scammed. I've therefore considered whether Mr A (M) was a victim of a scam.

When considering what's fair and reasonable in this case, I agree with our Investigator that the CRM code doesn't apply here. The CRM code is voluntary and ClearBank aren't a signatory, so aren't expected to act in accordance with the CRM code.

Whether someone has been scammed or the matter is a civil dispute can be finely balanced. In this instance Mr A knowingly made the payments to D, so they are authorised push payments (APP). But for me to be satisfied someone has been the victim of an APP scam, I need evidence to show the customer has been dishonestly deceived about the purpose of the payments at the time they were made.

I've seen evidence from the beneficiary bank which appears to show the funds being used by both the recipient and its customers as they were intended, which is in-line with what Mr A described his understanding to be.

I'm conscious D did have business premises, and it appears they were operating as a genuine jewellery shop. The company was registered on Companies House, making the individuals involved publicly traceable. All suggesting the company was providing legitimate services, at least at one point. Liquidators also appear to have been appointed which points to a legitimate business.

Furthermore, Mr A met with the investors in person prior to investing. And he met with Mr B to receive his cash returns and after being notified of the issue with the investment. This isn't typical of a scam.

I've seen evidence there's an on-going fraud investigation by the police, but no indication of the outcome has been provided or evidence shared. The investigation itself isn't enough to say M has been scammed.

Based on the evidence I've seen, I'm not persuaded that M has been the victim of a scam because I've not seen enough to show D dishonestly deceived Mr A about the purpose of the payments at the time they were made.

ClearBank should protect their customers from fraud and scams – by looking out for unusual or suspicious payments and carrying out additional checks before processing them. But, as I've explained, these obligations are predicated on there having been a fraud or scam. And given I've concluded that these payments weren't made as part of a scam, these obligations don't apply here.

As mentioned, there's an on-going police investigation into D. If new evidence were to come to light showing the investment to be a scam, Mr A (M) could present this to ClearBank for it to consider as a new complaint.

I would however at this point like to explained that, in any event, I don't think it makes a difference here because even if M had been the victim of a scam, it's not likely I would ask ClearBank to refund the monies. I say this because Mr A used company funds for an investment for personal gain. In using a company asset in this way Mr A has effectively borrowed the money from M. This means M could seek to recover funds from Mr A directly. If this wasn't possible, like if Mr A was bankrupt, then M may have a claim against ClearBank but I can't see that's the case here. It is possible though that Mr A had an accrued debt owed by M and the withdrawals are the debt being paid, but in this instance, M wouldn't be at a loss. And Mr A isn't an eligible complainant in his own right as the funds didn't come from his personal bank account.

On a final note, I've also thought about whether there's anything else ClearBank could have done to help Mr A. When he first alerted ClearBank to the alleged scam it treated the matter as such and on the same day sought to recover the payments Mr A made from the receiving bank. Regretfully this was unsuccessful as there were no funds remaining to be recovered. So, I don't think they could reasonably have done anything more to recover the payments.

I'm sorry to disappoint Mr A further but it would only be fair for me to ask ClearBank to refund the payments if I thought they had been lost as the result of a scam and that ClearBank was responsible for it. As I'm not persuaded that this was the case, I don't think ClearBank needs to do anything further.

My final decision

My final decision is that I do not uphold this complaint against ClearBank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 3 February 2025.

Charlotte Mulvihill
Ombudsman