

The complaint

A company which I will refer to as 'D', complains that Clydesdale Bank Plc failed to prevent the company falling victim to a scam.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, in December 2022, the financial controller of D received an email from the company's director, asking them to settle an invoice for about £40,000. The financial controller was told that urgent action was required as the payment had been long overdue and there was a potential for legal action.

The financial controller proceeded to make the payment. Unfortunately, unknown to them, the email was from a fraudster.

The next day, the financial controller received instructions (again from the fraudster purporting to be the director) to make two more payments to the same payee, which they did.

Few days later, the fraudster emailed asking the financial controller to make a payment to another supplier stating that their invoice was also overdue. It appears that at this time the financial controller had some concerns about the payment but on being urged by the fraudster, went ahead and made the payment.

In total five payments were made for about £300,000. All payments went to two different accounts with the same bank.

The fraud came to light a day later when the (genuine) director informed that they did not send the payment instructions. D contacted Clydesdale who in turn contacted the recipients' bank. Unfortunately, as I understand it, only £11,510 could be recovered.

D complained to Clydesdale as mentioned above. The bank said it hadn't done anything wrong. D also complained to the recipients' bank, which too did not uphold D's complaint.

One of our investigators considered the complaint and was of the view that it should be upheld. In summary, he said that the bank ought to have intervened at least when the third payment was made out of D's account and had it done so further losses could have been prevented. But he was also of the view that there was some contributory negligence on part of and that the receiving bank too could have helped prevent the losses to D. So, he considered it fair that Clydesdale reimburses one-third of the losses suffered by D from third payment onwards. Clydesdale accepted the investigator's opinion, but D didn't.

My provisional decision

I issued a provisional decision (which forms part of this decision) upholding the complaint. I said:

“Did Clydesdale bank miss an opportunity to prevent the loss to D?”

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make. However, there are circumstances where it might be appropriate for banks to take additional steps – as for example have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud.

I have reviewed D's bank account statement for about six months prior to the payments to the fraudster, to understand the general account activity. Over the period, I see that this was an active account and there have been payments of high value. D says that some of these payments were made to their sister concerns but has acknowledged that they are separate legal entities. I agree with the investigator that because they were external payments made to separate entities, it is fair to take those payments into account when considering what was the normal account activity.

Overall, I am satisfied that it wouldn't be fair to say that the bank ought to have intervened when the first payment was made. There have been several past payments of higher value than this, and I am not persuaded that the payment was to a new payee ought to have automatically given the bank a cause for concern.

The second payment was higher in value compared to the first. However, D has made payments around that size in the past. Further, the amount represented relatively a small proportion of the balance on the account. It did not for example consume all or substantial proportion of the funds in D's account – which might have been an indicator the account was at risk of fraud.

As I said, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make unless there are signs that that might indicate that its customers were at risk of fraud.

It is a matter for the bank as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. But where it is alleged that it didn't do enough to prevent a loss which resulted from an authorised push payment fraud, I will look into the circumstances of the case and based on what I have seen, decide whether in that case the bank could have fairly and reasonably done more.

Whilst I take on board what D has said, without the benefit of hindsight, I can't say that the second payment stood out sufficiently from the prior account activities to reasonably have prompted Clydesdale bank to take further action. I'm not persuaded that there was enough here for me to find the bank was at fault in carrying out D's payment instruction in line with its primary obligation to do so.

However, I agree with the investigator that the situation was different when it came to the third payment. From what I can see, the amount was higher than any prior payments during the previous six months; it was made immediately after the second payment (as I understand a minute after) and by the time this payment was attempted, the bank would have been able to see that the spending pattern over the two-day period, was unusual to the normal account activity even allowing for the possibility that occasional higher value payments could happen.

Taking all of this into account, I consider that it is reasonable to conclude that at least by the time the third payment was made, there was enough going on for the bank to have intervened to ensure that its customer wasn't being a victim of fraud. And had it done so, I agree, for the reasons given by the investigator, it is more likely than not that the fraud would have come to light and the losses from that point on prevented. So, it is fair the Clydesdale shares a proportion of the losses D incurred from the third payment onwards.

Did D act reasonably in the circumstances?

I have then considered whether D should accept some responsibility for the loss.

The investigator was of the view that D's procedures meant that a verbal authorisation was required with the director before making the payments and as the financial controller did not obtain it, there was some contributory negligence.

In reaching this conclusion the investigator took into account a conversation the bank had with another staff member when they reported the scam. In that call, the staff member informed that the finance director asked the financial controller to seek verbal authorisation from the instructing director, but they didn't.

In addition, when asked about D's process for authorising and completing payments, their representative told us: *"Yes, there is a written payment process at [D]. The Finance Director would authorise any payments in the daily banking system and the Directors are also able to authorise payments, which can on some occasions, be sent directly to be processed for payment."*

D denies that their procedure requires verbal authorisation by the director before making the payments. They say that it not uncommon for the director to ask payments to be made via email.

They have also given me examples of earlier instances where the director requested the finance department, via email, to make certain payments. They say that the finance director asked the financial controller to seek verbal authorisation only in relation to the payment made to the second payee, but by that time, due to the pressure put by the fraudster (pretending to be the director), the financial controller had already made the payment. So, they contend that it is not fair to say that there was contributory negligence on D's part.

I have reviewed the submissions and I agree that the requirement for verbal authorisation was mentioned only in the context of the second payee. Listening to the call between the bank and D's staff, it seems to me that on that occasion the finance director advised the financial controller to seek verbal authorisation from the instructing director – but unfortunately by that time the relevant payment was already made. Based on the evidence provided by D, I consider it more likely than not that D's procedure at the time didn't require financial controller to obtain verbal authorisation for every payment they make.

So, I can't say with certainty that the financial controller did not follow D's usual procedure. To that extent I differ from the investigator. However, I do think that there was contributory negligence on part of D. I will explain why.

The financial controller first received an email from a 'law firm' (that email also was from the fraudster). The email simply said: *"I am a lawyer from (name of the firm – which is a genuine firm) regarding a client, chasing an unpaid invoice issued to your company"*. It then asked that the invoice be settled as soon as possible.

I can see that the email address from which the email came, had an extra letter added to the name of the (genuine) law firm but I don't think the financial controller would have been able to spot that readily.

However, the message itself was vague. It gave no information other than to basically say that D owed some money to someone and that they needed to pay it. No invoice was even attached. I consider it would be unusual for a reputed law firm chasing a payment to send such a vague email.

That said, the financial controller soon after received an email purportedly from the director of D. This email forwarded another email from the 'law firm' and asked the financial controller to make the payment. This email, on the face of it, came from director's genuine email address and included their profile picture. It seems to me that this email would have given some assurance to the financial controller about the genuineness of the earlier email.

D's representative has said that after receiving this email, the financial controller emailed the finance officer asking if they had an invoice on QuickBooks, as they were unable to find the invoice on the system. The representative says that the finance officer advised the financial controller to contact the director directly on this, which they did (or so they thought).

The fraudster then sent them a fake invoice and pressured the financial controller in that email to make the payment quickly.

D's representative said that the financial controller then "performed due diligence", checked the records on Companies House and could find a genuine company matching the name on the invoice. They said: *"When setting up and authorising the payment, the Financial Controller and Finance Officer made several checks on the payment company, people involved and account details which were superficially passed."*

However, when they checked the Companies House to carry out due diligence they would have noticed (or ought to have noticed) that this payee company was incorporated only in March 2022 whereas the invoice was dated February 2022. In addition, the email from the 'director' instructing the payment said that the invoice was for the services rendered by this supplier the year before (2021).

D told us that it is common for them to pay newly incorporated companies and so the invoice date being prior to the incorporation date wouldn't have raised any suspicions. I am not persuaded by this. In my view, had the discrepancy been noted, together with the unusual nature of the request by the 'law firm' and the lack of any previous correspondence about the invoice, would more likely have increased the suspicion about the genuineness of the instruction prompting the financial controller to take additional steps to verify the payment such as checking with the finance director, given that they were new to the job.

D also say that checking the incorporation date against that of the invoice 'is not a standard test' and it also wasn't examined as the relatively new staff member wasn't suspicious of the invoice. However, I consider that the incorporation date is something they could have easily noticed when they carried out due diligence.

After this payment, the next day the 'law firm' enclosed two more invoices as due. This related to the same payee, but this wasn't something they mentioned in the email the

previous day. If multiple invoices were overdue, it would have been reasonable to expect all of them were mentioned together.

Few days later, they sent another email stating that they were acting on behalf yet another supplier of D whose invoice was also unpaid.

So, by this time there were four invoices of big amounts from two different suppliers that were supposedly not paid by D for many months, none of which D could find on their system.

D's representative has said that at that point the financial controller was concerned by the value of the payment and they contacted the director on Slack instant messaging (rather than through email).

We haven't got a copy of the exchange between the financial controller and the director on Slack. However, D's representative has said that the director advised the financial controller to contact all the directors in relation to this (as they couldn't recognise the payment). However, only on the the same morning the financial controller received an email from the director asking them to make the payment to this payee and explained why it was urgent. So, I consider that it was unusual for the director to now say that they didn't recognise the payment.

Nevertheless, the financial controller sent the invoice details to the director and some other staff members. They explained that D had not received the invoice before and asked whether they were 'aware of this service'. They then received a rather curt email from the fraudster, as if from the director, that the payment should be made. This was contrary to what they advised on Slack.

To add to this, that email also contained a warning at the top. It asked the recipient to be 'careful with the message' and said that though the email claims to come from director's email address, any reply would go to an email address at another domain. It suggested to use other means to ensure that the email address is legitimate.

D says that it can't be certain whether this message appeared at the time it was opened. They also say that this warning didn't appear every time the email was received from the fraudster and so could have been missed on a single message in the chain, in the stress to get the payment made.

I consider it more likely that the message was presented when the email was received. Whilst I note the submission that the financial controller was under stress, the message was prominent and given what had happened before, the financial controller could have taken further steps to verify the genuineness of the instruction through some other means, before going ahead and making the payment.

In addition, D's representative says that before making this payment, the financial controller carried out due diligence on this company as well, checked companies house and could see they were a genuine company. However, here again they could have seen that this company was incorporated only in August 2022, but the invoice was dated May 2022 and they purportedly had carried out a large amount of work even before.

It is not clear whether the financial controller contacted the finance director after making the payment or whether the finance director responded to the earlier email which financial controller sent to various staff enquiring about the payment, but it appears that the finance director advised the financial controller to seek verbal confirmation from the instructing

director. This suggests to me that the finance director did have some concern about the email instruction. Unfortunately, it seems that the payment had already been made.

I appreciate that the fraudster went to great lengths to try and hide the fact that this was a scam. I also appreciate that the financial controller was relatively new and were pressured by the fraudster. And I am conscious that ultimately, the company is the victim here. However, I am required to determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. Given what I have said, I consider it fair that D accepts some responsibility for the loss.

And finally, I also need to take into account the other complaint against the receiving bank in order to determine fair compensation in this case. In relation to that complaint, I am currently minded to agree with the investigator that the receiving bank too could have done more to prevent the losses to D. I will allow for this when determining what should be fair compensation in this case.”

Having reached the above conclusions, I said that in order to put things right, Clydesdale should reimburse D one-third of the losses incurred by D from the third transaction onwards, together with interest.

Response to provisional decision

Clydesdale accepted my provisional decision. Whilst D’s representative sought some clarification regarding the proposed compensation, they didn’t confirm whether or not D accepts the provisional 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 see no reason to depart from the conclusions I reached in my provisional decision. I remain of the view that the settlement set out in my provisional decision represents a fair and reasonable outcome to this complaint.

In summary, I find it reasonable to conclude that at least by the time the third payment was made, there was enough going on for Clydesdale to have intervened to ensure that its customer wasn’t being a victim of fraud. And had it done so, it is more likely than not that the fraud would have come to light and the losses from that point on could have been prevented. However, taking into account what other parties too could have done, it is fair that Clydesdale shares a proportion of the losses D incurred, from the third payment onwards.

Putting things right

Clydesdale should reimburse D one-third of the losses incurred by D from the third transaction onwards as shown below:

Date of payment	Amount paid	Amount recovered	Clydesdale’s share
08/12/2022	£68,055.10	-	£22,685
12/12/2022	£65,000.00	-	£21,667
12/12/2022	£66,247.59	£11,510	£18,246
Total			£62,598

Clydesdale should also pay interest on these sums at 8% p.a. Interest should be paid from the date of payment to the date of settlement.

My final decision

My final decision is that this complaint should be upheld. In full and final settlement of it, Clydesdale Bank Plc should pay D as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 10 July 2024.

Raj Varadarajan
Ombudsman