

The complaint

A limited company, T, complains that ClearBank Limited didn't do enough to prevent it losing money to a scam.

Mr K is a director of T and has brought the complaint on its behalf. He initially used a representative when doing so. For ease of reading, I'll mostly refer to Mr K, where I mean him, his company, or the representative.

T'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 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.

Mr K says he was the victim of an 'impersonation scam'. At the time he believed he was dealing with Mr M, the director of a genuine limited company. He later discovered the person he'd been communicating with had been impersonating Mr M. Across September 2023 and October 2023, Mr K made 8 payments totalling just under £16,800 from T's account, which was held with ClearBank.

Mr K complained that ClearBank's systems and controls failed to protect him from being a victim of fraud. Specifically, that the disputed payments were out of character and indicative of him potentially falling victim to a scam. He claims, had ClearBank intervened, and provided him with warnings that the payments he was making might be fraudulent, his losses would've been prevented. He also complained about ClearBank's response when he notified them that he'd likely made these payments as the result of fraud / scam. Mr K asked ClearBank to refund his loss and pay 8% annual interest. Ultimately ClearBank concluded that it was not liable for the loss suffered. The matter was referred to our service. Our Investigator looked into Mr K's complaint but didn't recommend that ClearBank refund him.

Mr K did not accept the Investigator's assessment and asked that an Ombudsman review the matter.

Having reviewed the case, I agreed with the outcome our Investigator had reached. So, in an attempt to resolve matters at the earliest possible stage, I wrote to Mr K, addressing some of his concerns, and explained in some more detail why I couldn't uphold his complaint.

I said that simply falling victim to a scam doesn't create a basis, upon which, I could ask ClearBank to refund Mr K's losses. In these specific circumstances I could only ask ClearBank to refund these losses if it can fairly and reasonably be concluded that its act(s) and / or omission(s) were the cause of them. In simple terms I'd need to be persuaded that ClearBank failed to do something that I'd reasonably have expected it to have done, and but for that failure Mr K's losses would've been prevented.

I explained that a payment service provider (PSP), such as ClearBank's principal duty is to process payments that its customer instructs it to make without undue delay. But I agreed that this is not the end of the story, and that ClearBank also has regulatory and lawful obligations to be alert to various risks in relation to the accounts held with it. And it is the friction between such competing obligations where the crux of this matter is found. Naturally, with the benefit of hindsight it's easy to say that ClearBank ought to have identified the payments as being fraudulent. But in practice this isn't always possible and can be quite challenging as PSP's like ClearBank process thousands, if not millions of payments on a daily basis, and it would not be realistic or reasonable to expect them to stop and check each one. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. Whilst ultimately, it is a matter for ClearBank as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact and questioning transactions to confirm they are legitimate. My role here was to think about whether in the circumstances of this case ClearBank ought to have had concerns and intervened before processing the disputed payments.

I highlighted that the prior account activity is an important consideration when thinking about whether the payments were sufficiently unusual and / or suspicious such that ClearBank should have paused them pending further enquiry, before allowing them through. I shared that I'd reviewed the account activity prior to the scam payments, and I could see payments for comparable and even larger amounts being made. So, in the context of Mr K's normal spending and account usage, I was satisfied here, that it wouldn't be fair to say that the payments should have appeared sufficiently unusual and / or suspicious to ClearBank such that it ought to have intervened and contacted him about them.

I confirmed, that in reaching this outcome I'd taken Mr K's views onboard. This included his thoughts on the disputed payments being abnormal behaviour because majority of the other previous large transactions were made to limited company accounts with major high street banks, with the disputed payments being made to individual's accounts that were held with non-high street banks. And his opinion, that this was not a comparable transaction format / pattern suggesting that it ought to have been picked up by ClearBank's transaction monitoring systems. But I didn't agree, with my reasoning being that the expected use of a business account, such as his, would include sending and receiving money from different types of payer's and payees' and to different types of banks / merchants. Given there is a balance to be struck I didn't think it was unreasonable to say that there would've been an existing picture of Mr K's account being used for transferring quite large amounts of money, with payments being made through different payment channels. And in the absence of any other concerning factors, transfers of equal or lower values being paid to individuals and non-high street banks wouldn't have stood out as being sufficiently unusual or suspicious where I'd think it's reasonable to have expected ClearBank to have done more. Taking this altogether I didn't think ClearBank had acted unfairly or unreasonably by not intervening at the time of the payments.

I also concluded that there wasn't anything ClearBank did or didn't do that impacted whether anything could've been recovered from the recipient accounts. And that ultimately, I was satisfied that its act(s) or omission(s) wouldn't reasonably have resulted in Mr K's lost funds being recovered.

Mr K still disagrees. He believes that important aspects of ClearBank's regulatory obligations and responsibilities have not been adequately addressed. He asked that his complaint be reconsidered. I've addressed his further comments below.

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'm not persuaded to change my mind from the outcome both the Investigator and I have explained (as set out above). I appreciate this will be disappointing for Mr K, and I'm genuinely sorry to hear about his loss, but I can't fairly and reasonably ask ClearBank to refund this.

To start, for Mr K's benefit, each case is decided on its own merits, and my role as an Ombudsman is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And in reaching my decision I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Mr K mentions that the Lending Standards Board's Contingent Reimbursement Model (the CRM code) sets clear industry expectations for handling fraud cases. He also states in his submissions that ClearBank should be held to the same standard as other financial institutions. It's not clear whether Mr K has referenced the CRM code because he thinks a refund is due to him on that basis, or simply to support his position that ClearBank ought to have intervened and done more to protect him. However, the CRM code is a voluntary code which some banks had signed up to through which victims of authorised push payment (APP) fraud, in certain circumstances, can receive a refund of their losses. But here I'm satisfied this isn't a relevant consideration as ClearBank are not a signatory of the CRM code.

I also note Mr K has asked for clarification on the fraud prevention mechanisms ClearBank had in place at the time; and how ClearBank assesses transaction risk. Firstly, my role isn't to assess and make a finding about whether ClearBank's fraud prevention systems are generally fit for purpose or meet their regulatory requirements, that would be a matter for the industry regulator, the Financial Conduct Authority (FCA). I'm also not at liberty to disclose to Mr K information about ClearBank's fraud detection systems. This information is sensitive and in the wrong hands, could assist fraudsters looking to know how to get around these systems, so this information isn't for wider sharing nor suitable for the public domain. Secondly, and more crucially, I'm only required to share / describe the evidence I've relied upon, and here given the very nature of Mr K's complaint is that ClearBank's systems did not flag his payments as unusual / suspicious, it doesn't require me to understand what exactly its systems are set up to do. All I need to decide is whether I think the transactional activity ought to have prompted further action by ClearBank or was it reasonable for it not to have done. And the information I've relied upon in reaching my outcome on this point is ClearBank's confirmation its systems did not flag when processing the payments; T's bank account statements; and the information Mr K has provided about the payments he'd made.

Mr K makes the point that ClearBank's primary duty as a PSP to process transactions efficiently, without undue delay does not absolve it of its obligations under *"UK financial regulations, including fraud detection, anti-money laundering (AML) compliance, and transaction monitoring. The Payment Services Regulations (PSRs) 2017 and Financial Conduct Authority (FCA) guidance require payment service providers to implement appropriate fraud prevention measures."* He continues to maintain clear indicators of fraud were present.

When I wrote to Mr K I did explain that PSPs such as ClearBank have obligations to prevent their accounts being used to misappropriate funds, so it's not that I disagree with him on this point. But as I pointed out there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. Arguably every payment processed could potentially be fraudulent, and it wouldn't be reasonable to expect a PSP to stop and check every payment. So the key questions for me to answer here are; were the disputed payments unusual or suspicious enough to say that ClearBank reasonably ought to have flagged them and intervened; and / or could ClearBank when processing the payments reasonably have known the payments Mr K was making were related to a scam (based on the information available at the time).

Several points Mr K has raised in response to my email to him relate to his continued disagreement with the conclusion I've reached about the transaction activity / pattern. He maintains, in his opinion, the transactions were high risk; that clear indicators of fraud were present; and he thinks my analysis overlooks critical details. He repeats the key issue is not just the size of the payments but the nature of the recipients. He restates unlike previous payments, which were made to limited companies with major high-street banks, the disputed transactions were directed to individuals using non-mainstream financial institutions. He considers a shift in recipient type, particularly from companies to individuals, to be a well-established red flag in fraud detection. He says the assertion that this did not warrant further scrutiny contradicts the principles of money laundering regulations, which emphasises the importance of monitoring transaction patterns, not just amounts. He argues ClearBank's fraud monitoring system did not flag this deviation from usual business behaviour, which suggests a systemic failure in its fraud detection capabilities.

For absolute clarity my assessment is not based on just the size of the payments, I've taken into account previous transactional activity; the nature of Mr K's account; the intended and expected use of such accounts; known transactional patterns indicative of potential misappropriation including things like the velocity / values of the payments; and whether there was anything known to ClearBank about the payee's that ought to have put them on notice. Having carefully considered everything, I just don't think there's enough of a deviation from previous account activity, or any significant factors that I think ought to have given ClearBank a cause for concern. To add to this, many payments made to individuals using non-mainstream financial institutions are genuine, so this, especially in the absence of any other concerning factors isn't enough to say ClearBank ought to have known Mr K was at risk of financial harm from fraud. As Mr K hasn't presented anything new, nor anything that I haven't already considered in reaching my conclusion, I'm not persuaded to change my mind on this point.

Finally, Mr K says the possibility of recovering funds has been dismissed, as there is no clear evidence that ClearBank made adequate efforts to pursue recovery. He says it could have promptly contacted the recipient banks to request a freeze on the respective account, initiated a chargeback or recall process where applicable, or engaged with law enforcement to facilitate recovery. He states that if ClearBank failed to act swiftly, then it contributed to his inability to recover the funds, making ClearBank partly responsible for the financial loss he has suffered. Mr K has asked for detailed information on the specific recovery steps ClearBank took and why more funds could not be retrieved.

I've thought about what Mr K has said, but I don't agree. My role here isn't to provide Mr K with detailed information about the steps ClearBank did or didn't take. It's to decide whether ClearBank's act or omission would've resulted in Mr K's lost funds being recovered. Here I've seen evidence in the form of recipient account statements which show that by the time Mr K realised he'd fallen victim to a scam and reported this to ClearBank, none of Mr K's funds remained in those accounts for recovery. So even if I were to find ClearBank ought to have acted sooner, it wouldn't have resulted in them being able to recover anymore of Mr K's funds from the recipient PSPs. And chargeback isn't a route of recovery ClearBank could've explored, as these were not card payments. It also isn't ClearBank's responsibility to report this to the police. It is for the victim of crime – here Mr K, to report the matter. I'd expect ClearBank to co-operate with the police – including the sharing of any information if they were to request it. I've not seen any evidence of the police being in touch with ClearBank or which shows it has failed to co-operate with police enquiries. And even if I were to say that ClearBank ought to have reported the matter to the police (which to be clear I don't think it needed to), Mr K hasn't provided any convincing evidence that swifter action in reporting / engaging with the police would've facilitated recovery of his funds. So I can't fairly and reasonably conclude that any of ClearBank's acts or omissions when responding to the notification of fraud were the cause of Mr K's loss.

So whilst I'm naturally sympathetic to Mr K having been a victim as he has, for the reasons I've set out, there isn't a fair and reasonable basis upon which I can require ClearBank to do more to resolve this matter.

I appreciate Mr K's strength of feeling about what has happened here, and he is under no obligation to accept my final decision. If he doesn't accept my decision, it won't be legally binding, and he is free to pursue ClearBank through other avenues, such as the courts, should he decide to do so. If this is something Mr K is considering, I'd recommend that he seeks independent legal advice.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 24 April 2025.

Sonal Matharu
Ombudsman