

## The complaint

S, a limited company, complains that ClearBank Limited (trading as Tide) won't refund the money it lost in an impersonation scam.

Mr D is a director of S and is being represented by a third party, but I'll refer to S and Mr D for ease of reading.

## What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail. Instead, I will summarise what I consider to be the key information.

Mr D says he received a notification on his mobile banking app, on 2 November 2023, about a payment of £4,695, asking if this was something he'd authorised. He says he received a phone call, almost immediately, purporting to be from ClearBank.

The caller seemed to know Mr D's personal details and this helped persuade Mr D that the caller was genuine. The caller spent some time discussing types of frauds and scams and providing warnings to Mr D. He advised Mr D to transfer S's money to a safe account and Mr D was persuaded to make four payments, as follows:

Date and time	Amount	Payment type
2/11/2023 15:20	£8,305.03	Faster payment online
2/11/2023 15:42	£4,999.85	Card payment online
2/11/2023 15:44	£4,999.82	Card payment online
2/11/2023 15:51	£4,999.50	Card payment online

Mr D says he became suspicious after the fourth transaction, as the scammers put more pressure on him to process additional transactions. His partner phoned ClearBank on another device and ClearBank confirmed that he'd been the victim of a scam.

ClearBank contacted the receiving bank and was advised that the funds had left the receiving bank account shortly after they had been transferred and no funds remained. It said it didn't have chargeback rights under the card scheme because the card transactions had been authorised by Mr D.

ClearBank didn't offer to refund the transactions, so Mr D raised a complaint, but ClearBank didn't uphold it. Mr D says the transactions were highly unusual for his account and ClearBank ought to have intervened. Had it intervened, he thought the fraud could have been prevented.

ClearBank says the transactions didn't appear out of character and so it had no reason to intervene. It attempted to recover the money when Mr D contacted it to report the fraud. It was told by the receiving bank that no funds were left and it didn't have chargeback rights to pursue chargeback claims for the card payments, because Mr D had authorised them.

Our investigator didn't uphold the complaint. She didn't consider the transactions were out of character and so she didn't think ClearBank should have intervened. She said ClearBank acted promptly to try and recover the money sent by faster payment. For the three card payments, she thought the prospect of any money being recoverable was small and ClearBank lacked chargeback rights in any event.

### **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.

There's no dispute that Mr D authorised the payments, even though he was tricked into doing so and was the victim of a scam. I appreciate he didn't intend S's money to go to scammers. Under the Payment Services Regulations 2017, S is liable for the loss in the first instance. But the matter doesn't end there.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider ClearBank should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I've looked at the account statements for S for the six-months leading up to the fraudulent transactions. This was a business account and so it might have been reasonable for ClearBank to have anticipated that there could be higher value payments and more frequent transactions than might have been the case with a personal current account. S's account appears to have operated in this way. There were frequent transactions, small and large, sometimes with several large payments being made on the same day and being sent to a variety of payees, or the same payee. Transactions for several thousands of pounds at a time were not uncommon. I can also see an instance where it appears four transactions for similar amounts were made to the same payee on the same day, for amounts between £1,500 and £2,500. The statements show multiple individual transactions for several thousand pounds, sometimes on the same day, including several individual transactions of between £5,000 and £26,000. On balance, I don't consider the fraudulent transactions were a particularly unusual set of transactions for this account and in general, would have been harder for ClearBank to detect, given the way the account operated. Because of this, I don't consider ClearBank ought reasonably to have detected them. It was a business account, with frequent high and low value transactions to a variety of payees. These payments were not for unusual amounts, given the account history, multiple payments on the same day were not unusual and there was still a substantial balance in the account after the payments had been made.

Recovery

ClearBank contacted the receiving bank promptly once it was informed of the scam and I've seen the response from the receiving bank. The receiving bank said S's money left the receiving bank account at 15:23, within minutes of Mr D authorising the payment and before ClearBank was even notified of the fraud. I consider ClearBank could have done little more to try and recover this money.

In terms of the card transactions, my understanding is that the relevant chargeback rules mean it is unlikely a chargeback will be successful where an authorised payment has been made to a genuine merchant, as appears to be the case here. Scammers often trick people into paying for genuine goods and services which are then provided to the scammers, but this does not create a chargeback right against the merchant. Overall, where the prospect of success seems to have been very low, I consider it was reasonable for ClearBank not to have pursued chargeback claims for the three card transactions.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 22 November 2024.

Greg Barham  
**Ombudsman**