

The complaint

A company, which I'll refer to as F, complains that ClearBank Limited ("ClearBank") won't refund unauthorised payments. Mr T, who is the director of F, has brought this complaint on F's behalf.

What happened

On 12 September 2023, Mr T received a text message that claimed to be from Apple telling him that his iPhone device, that he lost just over two weeks prior, had been found. At the time he lost his phone, he had marked it as 'lost' on the find my iPhone app. To view its location, the text included a link that Mr T said he clicked on. He said after clicking the link it took him to a web page that looked exactly like the find my iPhone app and he was asked to enter the passcode to his phone to confirm his identity. Shortly after, he saw four faster payments debited his account totalling £12,720.80 so he reported this to ClearBank.

ClearBank didn't agree to refund F, so Mr T raised a complaint. ClearBank then issued its final response letter in November 2023. It said because of how the payments were made, it felt Mr T was negligent. But it considered that it ought to have intervened when the second payment was made and so it agreed to refund 50% of the losses involving the second, third and fourth payments which worked out to £4,435.40.

Unhappy with the decision ClearBank reached to not provide a full refund, Mr T referred the complaint to our Service. One of our investigators looked into the complaint and upheld it. In summary they said as the payments were unauthorised, and Mr T hadn't failed with gross negligence, ClearBank was liable to refund F's losses in full and pay 8% per year simple interest.

ClearBank didn't agree. It considered Mr T was grossly negligent and I've summarised its points below:

- Mr T's PIN to unlock his phone was the same PIN he used to log into his banking app and his passwords and PINs were stored on his Apple keychain.
- Mr T should have been aware that to access his Apple account he would need a password that would have been created for the account, not the PIN for his device, and that he would need to access his account via a web browser and not by entering the PIN for his device.
- No organisation would require a customer's PIN.
- Mr T didn't report his device as lost, and this allowed the scammers access to his device.

As ClearBank didn't agree, the matter was passed to me to decide. I issued my provisional decision on 11 April 2025 where I upheld this complaint. Mr T agreed, but ClearBank didn't agree. It said Mr T ought to have found it suspicious that he was being asked for his phone PIN after following a link from an unknown number, when normally his Apple ID and password would be needed to access his account. And that no company would ask for this. It also explained that it had no way of knowing Mr T's device was compromised before he contacted it so it considers Mr T should have some responsibility for his role in what

happened. It adds that had it been informed sooner, it could have stopped the payments and even if he believed he marked the device as lost, it would have still expected him to have contacted it.

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 uphold this complaint. I'll explain why.

Mr T reported the disputed payments as being unauthorised, which ClearBank hasn't disputed. For clarity, I haven't seen anything to indicate the payments were authorised. So in line with the Payment Services Regulations 2017 ("PSRs"), the relevant legislation here, ClearBank is liable to refund the unauthorised payments unless Mr T failed certain obligations.

Of most relevance here is the obligation to take all reasonable steps to keep safe personalised security credentials and to use the payment instrument in accordance with the account terms and conditions. Here, ClearBank raises that Mr T was grossly negligent. When I'm considering if Mr T has failed in his obligations with gross negligence, I need to consider that the test isn't simply whether someone was careless. For someone to fail with gross negligence they would need to have seriously disregarded an obvious risk, falling significantly below the standard expected of a reasonable person.

The text message Mr T received showed 'Apple' as being the sender of the message and mentioned the same device he had lost just over two weeks prior. After clicking the link in the message, Mr T said it looked exactly like the find my iPhone app and when prompted to verify his identity, he provided the passcode he used to unlock his phone. He said he also provided a contact number to be contacted on if his phone was found.

ClearBank argues that Mr T should have been aware that to access his Apple account he would need to use his Apple ID and password, and that no organisation would require a customer's phone PIN. It also said he would normally have needed to access his account via a web browser and not by entering the PIN for his device. And while I note its comments that Mr T should have found this suspicious, in the circumstances he thought he was following a process that was being set out by Apple for the purpose of verifying himself and subsequently being able to find his phone. I think this was plausible and that a lot of people would have done this in a similar situation given how the text, and the website from the link, appeared to be from Apple like it did for Mr T here. So I don't think Mr T was grossly negligent in taking the steps he did.

ClearBank points out that Mr T's PIN to unlock his phone was the same PIN he used to log into his banking app. And I agree there is a degree of carelessness in Mr T having the same PIN to unlock his phone as his banking app. But I don't think doing so falls so far below the actions of a reasonable person that he was grossly negligent.

ClearBank also argued that because Mr T said his passwords and PINs were stored on his Apple keychain, he hasn't kept his secure information safe. Mr T has clarified that you can't store, and he didn't store, his banking app PIN on his keychain. But in any event, ClearBank doesn't appear to be suggesting this is how the scammer accessed the account given Mr T shared his PIN, which I've addressed above.

ClearBank also considers Mr T was negligent in not reporting his device as lost to it sooner. It appears it's referring to a part in the PSRs that explains the obligation on Mr T to report to

ClearBank on becoming aware of the loss of his payment instrument without undue delay. The loss of the phone alone wasn't enough for the third-party to have gained access to his banking app. It also required additional security details that hadn't been lost at this point. I don't think it's accurate to describe Mr T's phone as a 'payment instrument' for the purposes of the PSRs, as it's ClearBank's banking app rather than the phone itself which ClearBank issued to Mr T.

That aside, I don't think it was common knowledge in September 2023 that people should inform their banks when their phones are lost or stolen or that there was an obvious risk to their banking apps or accounts if they didn't do so. So I'm not persuaded that Mr T was grossly negligent in not informing ClearBank when this happened. I note ClearBank's comments that it didn't know Mr T's device was compromised before he reported the scam and had he told it, it could have prevented the payments, but I have to assess here not simply whether it would have been helpful or reasonable for Mr T to have reported his phone loss to ClearBank, but whether in the circumstances, Mr T was grossly negligent in not doing so. Once losing his phone, Mr T took steps by marking his phone as 'lost' in his find my iPhone app. And I've explained above why I don't think Mr T was grossly negligent in not reporting this to ClearBank at the time.

Taking everything into account, I'm not persuaded ClearBank has shown Mr T failed in his obligations with gross negligence or shown there is any other reason to fairly hold Mr T liable. So in line with the PSRs, I'm satisfied ClearBank is liable for the unauthorised payments. It should also pay compensatory interest to reflect the time F has been without its money.

My final decision

My final decision is that ClearBank Limited should:

- Refund F's losses in full, less any funds recovered or refunded.
- Pay 8% simple interest per year on this amount from the date of loss to the date of settlement (if ClearBank Limited considers that it is required by HM Revenue & Customs to withhold tax from that interest it should tell F how much it's taken off. It should also give F a tax deduction certificate if it asks for one so it can reclaim the tax from HM Revenue & Customs if appropriate).

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 6 June 2025.

Timothy Doe
Ombudsman