

## **The complaint**

Mr G is seeking to recover £5,299 from Clydesdale Bank Plc, which was transferred from his bank account as a result of a third-party scam in March 2018. He says Clydesdale failed in both its CHAPS compliance and the BSI Code of Practice.

Clydesdale says it is not liable for the loss because Mr G unwittingly authorised the payment — and it could not reasonably have intervened or done more to try to recoup the money from the payee bank.

Mr G is represented by his wife, Mrs G, but I have referred to Mr G throughout this decision, even though during our investigation it was sometimes Mrs G giving testimony on behalf of her husband.

## **What happened**

I issued my provisional decision on 10 May 2021 explaining why I was thinking of coming to the same outcome as the investigator but explained my reasoning in more detail.

Clydesdale hasn't responded. Mr G does not agree with my provisional decision. In summary he has said:

- He doesn't agree the bank applied fraud triggers in his case as there was no intervention from the bank. He also feels this is also at odds with what I've said about how the bank could, and should, have done more.
- My decision is based on speculation, supposition and assumption and is therefore not safe and secure.
- His payment represented a sudden increase in spending, a payment for a large amount, payment to a new payee and an activity that matched a known method of fraud or financial abuse so there were reasonable grounds for the bank to suspect fraud.
- The bank made CHAPS compliance failures and did not explain how the payment method works in a clearly identifiable language. The branch employee should have pointed out that it was possible that the beneficiary of his funds could be a different person or business altogether.
- He is in contact with someone who had a near identical case here and the complaint was upheld.

## **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 have considered Mr G's response to my provisional decision and addressed any material points that I consider relevant to the outcome of his complaint within my decision below.

Whilst I appreciate Mr G has limited his complaint to a CHAPS compliance failure and a BSI Code of Practice failure, my role is an inquisitorial role and I am able to look beyond the original complaint if I feel it is appropriate to do so.

I note Mr G's comments that I have reached my provisional decision on speculation, supposition and assumption. My role is to weigh up all the available evidence – including Mr G's own testimony - and make a finding of fact – on the balance of probabilities.

In terms of near identical cases, I should point out that each case is judged on its own merits and what may appear (on the face of it) to be a similar set of circumstances, may often transpire not to be the case.

Upon reading all the available evidence and arguments, I have concluded that the fair and reasonable outcome, in all the circumstances, would be not to uphold this complaint for the following reasons:

It is not in dispute that Mr G authorised the scam payment of £5,299. He was duped by the scammers into instructing his branch to transfer that sum to their fake account. They deceived him into thinking he was buying a motorcycle through a genuine dealership website.

I accept that this was an 'authorised payment' even though Mr G was the victim of a sophisticated scam. He completed a CHAPS form in the branch to request the payment. So, although he did not intend the money to go to the scammers, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr G is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Clydesdale 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 make 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.
- For branch transactions like this, those steps may include following the Banking Protocol where appropriate.

Mr G submitted that his payment instruction was very unusual, if not unprecedented. Mr G has taken my comment about '*I haven't seen any information that would have given the bank reasonable ground for suspecting fraud or financial crime*' out of context. This statement was

made within the context of what would have happened if further probing had applied (and I have discussed this further below) and was not intended to refer to whether or not the payment itself should have triggered on the banks systems.

I don't disagree that the payment instruction in this case represented a sudden increase in spending, was a payment for a relatively large amount, a payment to a new payee and an activity that matches a known method of fraud. Although it is also worth noting here that the account had in fact only been running for two months – so there was little comparable activity on the account.

I don't intend to dwell on Mr G's point that there was no intervention here because as I said in my provisional decision; any questioning Clydesdale did wasn't enough. The bank knew the purchase was for a motorbike. Mr G said "*I was asked only one question, which related to the purpose of the transfer. I replied that it was for the purchase of a motorcycle*". There was a section on the CHAPS form regarding the purpose of purchase, so the question was asked.

From what I have seen, there is insufficient evidence to show the staff asked Mr G any appropriate follow-up or probing questions when he told them the purchase was for a motorbike. It seems they merely asked him where the money was going. Whilst a sudden increase in spending for a relatively large amount and to a new payee might not be unusual for a motorbike purchase, it doesn't appear that the bank gave Mr G any information about fraud and scams or asked any follow-up questions. In my view, they could and should have done more, particularly given the requirements of the Banking Protocol which encourages staff to ask probing questions and to get into the detail in order to test the purpose of the payment.

When looking at what would have happened if the bank had asked probing questions – it is not possible for me to know for certain what Mr G would have done. I therefore reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances and without the benefit of hindsight.

I've thought about what is likely to have happened if Clydesdale had asked Mr G probing questions. I think it's likely the bank would have discovered the dealership name belonged to a genuine company and along with the invoice and email address – all looked genuine. So, if the bank had probed further and Mr G had provided all of this to the bank at the time of the transaction, I don't think any of it would have been enough to raise suspicion with the bank. I haven't seen any other information that Mr G could have provided at the time in response to further probing by the bank, that would have given the bank reasonable grounds for suspecting fraud or financial crime. In other words, if the staff had carried out further or better questioning in line with a bank's duty of care, it seems improbable the scam would have been uncovered based on the evidence I have seen.

The bank could have asked whether Mr G had viewed the vehicle or could have talked generally about scams with cloned websites (which this in fact was) but I don't think this would have made a difference to Mr G proceeding with the transfer. My conclusions on this point are reinforced by the following:

- Mr G told us that the motorbike in question was 'way, way down south' – so I don't think there was any realistic prospect of him viewing the motorbike beforehand.
- Mr G had previously purchased motorbikes online that he hadn't viewed before. And he told us that all the motorcycling community do this.

So, having weighed up this evidence, I have reached a finding of fact that I don't think any of this would have put Mr G off proceeding with the transfer.

I've noted also Mr G's comments that the bank was guilty of a CHAPS compliance failure. Mr G has forwarded a copy of the 2021 CHAPS manual. Although this wasn't in place at the time - March 2018 - I have seen an earlier version from 2017 and the section Mr G has highlighted is the same as the current manual.

Mr G feels a fee is payable under CHAPS because the bank is duty bound to comply with some unique security regulations. Specifically, Mr G feels the bank was obliged to explain that the 'third of three unique identifiers (the beneficiary name)' might turn out to be completely different to that given in his payment instruction. He says that if he had been told this he wouldn't have gone ahead with the transfer.

The section Mr G has quoted in support of this is as follows:

*Terms relevant to sending Customers*

*5. A Participant (as a sending Participant) shall ensure that its contract with a Customer who wishes to make payments through CHAPS using the sending Participant's payment services provides (in easily understandable language and in a clear and comprehensible form):*

*5.1 an explanation of the unique identifier that must be provided by the Customer in order for a payment to be properly executed through the CHAPS System;*

*5.2 that the sending Participant will make a payment solely on the basis of a unique identifier and will not execute it on the basis of the intended recipient's name;*

*5.3 that the Customer must provide a correct name for the intended recipient of the payment that matches the account name associated with the unique identifier; and*

*5.4 (in the case of a corporate Customer or other non-natural person) that the Customer confirms that any payment instructed to be made by it through CHAPS is permissible and authorised under its constitutional documents and any applicable law.*

*6. The requirements of paragraph 5.2 above shall not affect a sending Participant's right or ability to send the intended recipient's name with any Payment Message in order to comply with any legal and regulatory requirements to which it is subject, as well as for their internal risk management processes to either prevent or detect financial crime.*

Looking at the glossary the definition of a unique identifier is

*An alpha numeric identifier or combination of identifiers used to identify a payment account. Within the CHAPS System, this would normally be either sort code and account number (domestic payments)...*

So I don't think Mr G is right in saying that the beneficiary name is a 'third' unique identifier. I also don't think this means the bank must explain that the payee name provided by a customer might not be the correct payee name on the beneficiary account.

My understanding of this section is that a participant (the bank) must let a payer know in the terms and conditions that the payment will be made solely on basis of a unique identifier (sort code and account number). They should also tell the consumer to provide a correct name for intended recipient (one that matches the unique identifier). Essentially the guidance is saying that a sending bank needs to make its customer aware it's just relying on unique identifiers, not the beneficiary name.

In turning to the terms and conditions of Mr G's account

Section 10.2 under 'making payments' it says

*You must ensure that the account number and sort code of the account you instruct us to pay funds to are correct. Although we may ask for the account name which we sometimes confirm as part of our security checks, this will not form part of the payment instruction as we do not usually check that the name matches the account name linked to the account number and sort code.*

So, the bank made Mr G aware in its terms and conditions that the payment would be made on the basis of the account number and sort code and that the name is not verified with the receiving bank in line with this section of the CHAPS manual.

I have noted Mr G's comments that the bank must explain how this method of payment works in clearly identifiable language. I accept Mr G's point on this, but even if this had been clearer and the branch staff had clearly pointed this term out to Mr G, I am still not persuaded that this would have made a difference, for the reasons I have already explained above.

I've also considered whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. Upon being notified by Mr G, Clydesdale sent the beneficiary bank notification of a scam payment and tried to recover the funds from the beneficiary bank on 6 April 2018, but all the funds had been taken by 29 March 2018. So, there were no reasonable prospects of recovering them.

Despite my natural sympathy for Mr G, who has been an innocent victim of a sophisticated scam, I am not persuaded that any further intervention from Clydesdale either under the BSI Code of Practice or the CHAPS manual would have made a difference here. I say this because I am persuaded Mr G would have proceeded with the purchase, primarily because he had made similar purchases in the past on the same basis (online and without viewing first) which weren't fraudulent. So, I think he would have proceeded even if there'd been more warnings about scams or that the bank warned him that it was not relying on the beneficiary name when making the payment.

Overall, on balance, I think it would be unfair and unreasonable to hold the bank liable for payments which under the Regulations, Mr G must be regarded as having authorised.

### **My final decision**

For the above reasons, I have decided it would not be fair or reasonable to uphold this complaint about Clydesdale Bank UK plc — and I therefore make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 18 June 2021.

Kathryn Milne  
**Ombudsman**