

## The complaint

H, a company, complains that Clydesdale Bank Plc didn't do enough to prevent the loss it suffered when it sent money to a Clydesdale account as the result of a scam.

Mr Y (H's director) brings the complaint on its behalf and has used a representative when doing so. But for ease of reading, I'll mostly just refer to Mr Y, when I mean his company H or the representative.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide an overview of some of the key events here. In December 2022 Mr Y was sadly the victim of an email interception scam. Believing he was dealing with one of his suppliers 'R', he was actually communicating with scammers using an email address that was only one letter different to the one the genuine supplier used.

So when Mr Y received an invoice with branding from his regular supplier but with changed bank details, he was tricked into paying the other account which was held with Clydesdale. As a result of this Mr Y sent a payment to the Clydesdale account where it credited as £46,453.52.

When Mr Y realised he'd been the victim of a scam he reported this to his own bank who in turn informed Clydesdale. Mr Y says no funds were returned. Mr Y later complained to Clydesdale as he felt they had likely failed by allowing a scammer to open and operate an account.

Clydesdale didn't think they'd done anything wrong. They said that they'd acted correctly when opening the account, they had no reason to be concerned about the running of the account and by the time there were informed Mr Y's payment was as a result of a scam, nothing remained to be returned.

The matter was referred to our service and one of our Investigators didn't recommend that the complaint should be upheld. In a broad summary she supported Clydesdale's position. Mr Y disagreed and asked for an Ombudsman to review his complaint.

In January 2024 I issued a provisional decision in which I said:

*"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've reached a different outcome to that of our Investigator. And so I'm issuing this provisional decision to give both sides a further opportunity to comment before finalising my decision.*

*I've seen evidence of the checks conducted by Clydesdale when opening the account. I've also seen a copy of a valid passport, corresponding selfie and a copy of a utility bill provided*

by the accountholder. As such, I don't think Clydesdale reasonably could have known (when opening the account) that it would later go on to be used in connection with a fraud or scam. So, I don't think Clydesdale caused Mr Y's loss in this way.

I've also reviewed the recipient account statements since account opening. There is nothing in the way the account operated (prior to the arrival of Mr Y's funds) that I think ought to have stood out as unusual or suspicious. Clydesdale have also confirmed that other than the report from Mr Y's bank, there were no other reports of fraud in relation to their customer's account.

Following the arrival of Mr Y's funds, a £7 fee for a currency conversion was automatically applied and there were transfers made from the account. The first of these was for £9,985. This represented a significant change in the way the account operated. Nothing close to this amount had previously been sent from the account. And whilst the payment went to a payee that had been paid previously, this had only happened on one day (a few weeks earlier) and the amount sent on that day wasn't significant. So, I don't consider the payee to have been a longstanding or established payee. As such, I think Clydesdale should have spoken to their customer before processing the first outgoing transfer.

Had they done so, I think it's highly likely they would have noticed the incoming payment for around £46,000 which had very recently arrived in the account from Mr Y. And based on what Clydesdale knew about their customer (from the information provided at account opening) and the way in which the account had operated for the previous year, such sums weren't expected in the account. The accountholder had declared an anticipated annual income of around £16,000 when opening the account. It also would have been apparent that their customer may not have been the intended beneficiary of the incoming payment. The information transmitted with that payment most likely indicated that it was meant for a company and not an individual (as the accountholder was). I say this because the payment receipt form provided by Mr Y indicates that the beneficiary details associated with the payment were for R. So I don't think it's unreasonable to say that at this point Clydesdale ought to have had some concerns about the account activity, and enough to have queried this with their customer.

Had they done so, I don't think it's likely Clydesdale's accountholder would have been able to explain and evidence their entitlement to the incoming funds. The payment was made internationally, from a business, and appeared to be intended for an engineering company of some kind. This is quite distinct from what Clydesdale knew about their customer. And as such, I think all of the money (less the £7 fee which always would have applied) would have remained in the account and available for recovery – particularly as the scam was relatively promptly reported to Clydesdale.

I've considered whether Mr Y ought to bear some responsibility for his own loss due to contributory negligence. And in the circumstances of this complaint, I'm not persuaded he should. I've seen the invoice amended by the scammer along with a previous genuine invoice. And I don't think this was obviously fraudulent. Further to this the email address used by the scammer was only one character different to R's correct email address, lessening the likelihood that this would have been noticed. I've also seen information from Mr Y's own bank (following their investigation) and nothing indicates that he was given scam warnings that he ignored. So overall when instructing the payment, I don't think Mr Y knew or ought to have suspected something was amiss but continued despite this, meaning that a reduction in award would be appropriate.

I also note that Clydesdale said that no funds remained when in fact there was a nominal amount of around £2.48 remaining. It's unclear whether this amount was actually returned, some of the system notes mention that it was due to be, but Mr Y hasn't mentioned receiving

*it. I've made provision for this below in the event that it has already been returned.*

### Putting things Right

*Clydesdale should pay H the equivalent amount of euro's (the currency the payment arrived in) had £46,446.52 been returned on 20 January 2023. I've chosen this date as its likely the return of the funds would have taken some time to arrange between the banks.*

*Clydesdale may deduct from the amount due any sums which have already been returned to H (or it's bank).*

*I also think 8% simple interest should be added to this amount between 20 January 2023 and the date of settlement. This is to compensate H for the loss of use of those funds for that period of time."*

Mr Y responded and said he accepted my provisional decision. Clydesdale provided a response which I'll address 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.

Clydesdale's further submissions largely refer to the conduct of Mr Y and presumably my decision not to make a reduction in award due to contributory negligence. They've also mentioned the actions of Mr Y's own bank.

I'm not able to make any findings in relation to the actions of Mr Y's bank (as they are based outside the UK and therefore outside our service's jurisdiction). I've already shared with Clydesdale evidence that Mr Y hasn't been reimbursed by his own bank. And I maintain that if (as is the case here) Clydesdale's actions can be said to have caused Mr Y's outstanding loss, that it's fair and reasonable to make an award on that basis.

I've considered Clydesdale's further points which include that Mr Y ought to have had a process in place to mitigate the risks of changed payment instructions. And that he should have done more to question why the payment needed to be made to a UK bank when the supplier was based elsewhere. In hindsight it is of course easy to say that these things ought to have happened / been in place. But in the context of the international nature of Mr Y's business, and the circumstances of this complaint, I still don't think that applying a reduction in award due to contributory negligence would be fair and reasonable. I maintain that I don't think Mr Y knew or reasonably ought to have suspected a problem and that he was so negligent when instructing the payment that a reduction would be appropriate.

### **My final decision**

For the reasons outlined above, my final decision is that I uphold this complaint. Clydesdale Bank Plc must take the steps outlined at 'Putting things Right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 8 April 2024.

Richard Annandale

**Ombudsman**