

The complaint

Mr A, who is the representative of an LTD company that I will call 'A', is unhappy ClearBank Limited ("ClearBank") won't reimburse A for the money it lost when Mr A fell victim to a safe account scam.

Even though the eligible complainant in this instance is the LTD company A, as Mr A is its representative and he interacted with the scammer, I will mainly refer to Mr A for the sake of readability.

What happened

The details and facts of this case are well-known to both parties, so I don't need to repeat them at length here.

In short, Mr A says he fell victim to a safe account scam. On 28 July 2023, he says he received a call from someone claiming to be from the ClearBank's fraud team from a number he associated with ClearBank.

Mr A explained he was informed that his account had been compromised and he needed to send the account balance to a new randomly generated account. He therefore sent this account five payments, totalling over £60,000.

Mr A realised he was the victim of a scam shortly after. Mr A then reported the matter to ClearBank to see if it could help recover his funds. ClearBank did try and recover the funds from the receiving bank, but the funds had been moved on before the receiving bank responded.

ClearBank upheld Mr A's complaint in part and offered to refund 50% of A's loss from the second transaction sent to the scammers account.

One of our investigators looked into this matter already. They decided that ClearBank should have intervened during the first transaction and she did not think it was fair to deduct 50%. ClearBank did not agree as it thought that the first payment was not sufficiently unusual to prompt an intervention. It believes that Mr A contributed to A's loss by ignoring an online warning, by not remembering ClearBank's usual security procedures and by ignoring a Confirmation Of Payee ("COP") warning and therefore this complaint was referred to me to issue a decision.

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.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

In broad terms, the starting position in law is that ClearBank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Overall, taking into account relevant law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable in July 2023 that ClearBank should:

- have been monitoring accounts and any payments made or received to counter various risks, including 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 firms 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, or provided additional warnings, before processing a payment and
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

It isn't in dispute that Mr A has fallen victim to a cruel scam here, nor that he authorised the payments he made

So, I've gone onto consider, taking into account what ClearBank knew about the payments, at what point, if any, it ought to have identified that Mr A might be at a heightened risk of fraud that merited its intervention.

Mr A's account was not a new account and ClearBank did have a payment history to compare the payments to. Given this I think that payment 1 should have been considered unusual compared to the payments that were usually made from this account, as it was larger than payments usually made by Mr A. It was also to a new payee. I understand that this is a business account and payments to new payees are not as unusual but given the size and that it was to a new payee I think it is enough for ClearBank to have intervened in this specific instance. So, I think that ClearBank should have really been aware that Mr A was at a heightened risk of financial harm.

Had ClearBank intervened, I see no reason why Mr A would not have told ClearBank that he was being asked send funds by what he thought was ClearBank's own fraud team, in order to 'protect the funds' in question. It would have been able to explain that the instructions he'd received were not in fact from ClearBank. And given that Mr A had no desire to lose the money and nothing to gain from going ahead with the payments, it's very likely that he would have stopped, and not followed the fraudster's instructions and his loss would have been prevented – had ClearBank intervened.

Ultimately, ClearBank didn't question the payments Mr A made. And I've seen no compelling evidence to indicate that Mr A would have misled ClearBank about the purpose of the payments or the surrounding circumstances, had it intervened.

So, ClearBank should, once it had established why Mr A was making the payments, provided a very clear warning that explained, as a minimum, that it would never ask him to authorise payments he did not make in order to 'protect his account', that phone numbers could be spoofed and that he was likely falling victim to a scam.

I think, on the balance of probabilities, that's likely to have caused Mr A to stop. He didn't want to lose the funds in question and I can see no reason for him to have continued to make the payment if he was presented with a clear warning of this nature.

I note that ClearBank did display a warning which said that if he was being asked to make the payment by it then it was a scam and Mr A proceeded anyway. But I think a human intervention would have provided more context than this warning and would have resonated with Mr A.

I'm satisfied that had ClearBank established the circumstances surrounding Payment 1, as I think it ought to have done, and provided a clear warning, A's loss from and including Payment 1 would have been prevented

Should Mr A bear any responsibility for his losses?

In considering this point, I've taken into account what the law says about contributory negligence, as well as what I consider to be fair and reasonable in the circumstances of this complaint.

Having considered the matter carefully, I don't think that there should be any deduction from the amount reimbursed.

The tactics employed by the fraudsters are common, but nonetheless captivating and alarming to anyone unfamiliar with them. Mr A was told that his companies' account was at risk and he had to make payments to help protect the account. Whilst I think that in some instances it would seem unusual to send funds to a different account in order to protect an account I am mindful that Mr A received a call from the scammer from a number genuinely associated with ClearBank. So in the circumstances, I can't reasonably conclude that Mr A had acted negligently.

I note that Mr A disregarded a written warning, a COP warning and he had calls with ClearBank in the past so it argues that Mr A should have been aware of its usual call security procedures. But overall and on balance I don't think that this is enough to say that Mr A's actions were sufficiently negligent to merit a deduction.

Mr A clearly didn't want to lose his money and was likely acting quickly to try and protect his companies funds. His actions cannot be explained by carelessness or that he made the payments for personal gain. There's little explanation as to why he made the payments other than that he genuinely believed what he was told by some very sophisticated fraudsters and in the circumstances I don't find his belief to be unreasonable. So I don't think a deduction is merited in this instance.

Putting things right

For the reasons I've explained, I'm currently minded to uphold this complaint about ClearBank Ltd and intend to instruct it to do the following:

- Refund the payments lost to the scam

- Pay 8% simple interest per year on these payments, calculated from the date of the payments, to the date of settlement. Less any applicable Tax.

My final decision

My decision is that I uphold this complaint and I require ClearBank Ltd to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 14 January 2025.

Charlie Newton
Ombudsman