

The complaint

C complains that ClearBank Limited (CB) should refund money it lost in a HMRC scam

What happened

What C says:

C opened its business account with Tide (provided by CB) in April 2023. On 30 May 2023, C's director (who I will call Mr A) was called by someone claiming to be from HMRC who said there was tax owed which immediately needed to be paid. He was told if it wasn't paid within 24 hours, Mr A would be arrested.

Mr A checked the caller's number and it was the official HMRC number. He was put under a lot of pressure to make payments while he was on the phone. The scammers sent him a letter via WhatsApp which purported to show he owed a total of £5,483.52.

Under instructions from the scammer, C made five payments to three different payees as shown:

Date/Time	Payment	Payee	Amount
30 May 2023 – 11.24am	Faster payment/mobile banking	Person A	£1,489
30 May 2023 – 11.58am	Faster payment/mobile banking	Person B	£1,498.67
30 May 2023 – 12.21pm	Faster payment/mobile banking	Person B	£998.69
30 May 2023 – 12.42pm	Faster payment/mobile banking	Person A	£998.48
30 May 2023 – 1.05pm	Faster payment/mobile banking	Person A	£498.68
Total loss			£5,483.52

The scammer then hung up and Mr A realised the company had been scammed. He reported the matter to CB at around 1.50pm on 30 May 2023.

As a result of the scam, Mr A lost all his savings. He feels very let down and depressed. He finds it difficult to concentrate on his work and has struggled to share what happened with anyone else.

He says CB should've done more to protect him. He was placed under an immense amount of pressure to make the payments; he was transferred through to higher levels of 'management' which made the scam appear real; the scammer was professional on the call; and the phone number was confirmed by Mr A to be that of HMRC.

C says CB should've intervened in the payments – as there were five payments to new payees on the same day and in quick succession. C says CB should refund the payments and add 8% per annum interest; and pay compensation of £300.

What CB said:

CB said:

- CB hasn't signed up to the Contingent Reimbursement Model (CRM) code.
- Mr A reported the scam to CB at 1.50 pm.
- CB tried to get funds back from the recipient bank, but this hadn't proved possible. At the time of writing its final response, CB hadn't had a response from the recipient bank, and considered it was likely the funds would've been removed by the scammers very quickly.
- The 'HMRC' letter threatened Mr A with arrest – which isn't something HMRC would do; and the letter contained various grammatical errors and spelling mistakes – which should've aroused suspicion.
- But CB accepted that its attempts at recovery hadn't been handled well and for that offered compensation of £150.

Our investigation so far:

C didn't accept this and brought its complaint to us. Our investigator didn't uphold the complaint. He said:

- There were some educational warnings shown online to C.
- Confirmation of payee (COP) had been completed.
- The fact that there were three different individuals as payees should've been a red flag to C.
- It wasn't clear if C owed tax as the company had only been incorporated in February 2023.

C didn't accept this and said:

- Mr A was previously employed by another company and he assumed the tax owed was due to that work.
- He was placed under immense pressure to make the payments.
- The fact that the payments were in quick succession should've alerted CB and caused the bank to intervene.

C asked that an ombudsman look at the complaint, and so it has come to me to do that.

I issued a provisional decision which upheld the complaint as follows:

I'm sorry to hear that C has lost money in a cruel scam. It's not in question that it authorised and consented to the payments in this case. So although C didn't intend for the money to go to a scammer, C is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 CB 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.

I need to decide whether CB acted fairly and reasonably in its dealings with C when it made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case as CB hasn't signed up to the Code.

The first consideration here is: if the payments were of a sufficient size and was out of character with how C normally used the account – then we would expect CB to have intervened and spoken to C about them. I looked at C's account, and it's fair to say that the payments were unusual compared to the way in which the company used its account.

I say that as the account was only opened in April 2023 – just over a month before the scam. And there had been only five low value payments in that time and before the disputed payments in question.

I'm also mindful that the payments were made in rapid succession – five payments were made within 90 minutes, and to three new payees.

That said, I can't expect CB to hold and intervene in all the payments – as there's a balance to be made: CB has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. So, in this case, I think CB acted reasonably in processing the first two payments.

But by the third payment – this was by then the third payment in an hour. And such was the velocity of payments that I think there was enough going on to say it was reasonable for CB to have intervened and asked questions of C.

CB was the expert in such matters and if they'd intervened, held the payments and contacted C's director, we would have expected them to ask open questions such as:

- Why are you making the payment?

- Who to?
- For what purpose?
- How were you contacted about the need to make payments?
- Where did the money come from?
- How were you given the bank account details where the money was to be paid to?
- Why are you paying personal accounts for an HMRC debt?

CB would've found out that C had been contacted 'out of the blue' via a phone call. And the 'HMRC' letter was sent by WhatsApp – an unusual way for HMRC to behave. And – this type of scam was, by this time, well known to banks. CB would've been well placed to advise C not to make the payments - and therefore, it's likely C wouldn't have made the payments from the third payment onwards.

I'm also mindful that no warnings were given to C, either specific tailored warnings about the payments, or more general ones – CB confirmed that was the case during our investigation.

Therefore, I'm persuaded that C should've intervened from the third payment onwards and the scam would've been prevented from that payment. And in the first instance, I think it's reasonable that CB refund the money from the third payment onwards.

Contributory Negligence:

But that's not the end of the story here. I also considered whether C could've done more to protect itself and whether it should therefore reasonably share some of the losses. And I think it should. I say that as:

- The HMRC letter wasn't addressed to anyone other than Mr A's name – there wasn't an address on it.
- It was sent by WhatsApp attachment, which isn't the way a government department would approach consumers.
- The letter contains spelling and grammatical errors – not typical of an official letter.
- The letter is contradictory – it says at one point that £3,489 plus fees of £2,000 is payable (£3,489) but then says £3,250 was payable. And elsewhere it says £1,489 plus a fee of £2,000 is payable (£3,489).
- Most importantly, Mr A was asked to make five payments to three different personal payees – and not one payment to (for example) 'HMRC'. Mr A says he was told to do it that way by the scammers – but I think it's reasonable to have expected him to have asked questions as to why that was so - and realised this was suspicious.

These were all 'red flags' and I think a reasonable person should've seen something wasn't right about what was going on. For these reasons, I think it's fair that C bears 50% of the losses.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether CB took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money.

I can see that a request was sent to the recipient bank soon after the scam was reported - at 3.51pm. But the request didn't detail the five payments, nor the amounts - just a total sum. A

second request was resent shortly afterwards – but this still didn't say which payments were sent to which account number/payee.

The recipient bank didn't reply and CB chased the matter on 13 July 2023 – but this was six weeks later, which was a long time after the scam.

So – CB didn't attempt recovery in an effective way. Having said that, the nature of such scams is that the funds are typically removed within minutes – and I think it's unlikely, on the balance of probabilities, that even if CB had detailed the recipient accounts properly, that any money would've remained.

I agree though that CB could've dealt with the recovery process better and the payment of compensation of £150 is right for that, as offered by CB. I haven't seen evidence that this was accepted by C or paid by CB. So this provisional decision formalises this award.

For the reasons I've explained, I consider CB should refund 50% of the third, fourth and fifth payments - £1,247.92, plus interest at 8% per annum simple; and pay the compensation of £150 (if this has not been paid already).

Responses to the provisional decision:

Both C and CB accepted the findings.

I now need to make a final 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.

Because both C and CB accepted the findings, my final decision is unchanged from the provisional decision.

Putting things right

CB must refund £1,247.93 plus interest and pay compensation of £150 – the bank didn't say if this had been paid or not, and so I assume it hasn't. **(continued)**.

My final decision

I uphold this complaint. ClearBank Limited must:

- Refund £1,247.93, plus interest at 8% per annum simple from the date of the payments to the date of refund.
- Pay compensation of £150 – if this hasn't already been paid. ClearBank should clarify this when responding to this provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 30 September 2024.

Martin Lord
Ombudsman