

The complaint

V Ltd, represented by Miss M, complained because PrePay Technologies Limited, trading as Prepay Solutions and Tide ("Tide"), refused to refund it for two disputed transactions.

What happened

At 4.44am on 3 August, there was a £700 debit to V Ltd's account, through a social media account. V Ltd contacted Prepay Solutions by chat at 9.40am about its Tide account. Miss M reported that V Ltd's social media account had been hacked. She said someone was using it unlawfully to advertise their business. She asked Tide to block any payments to the social media site until she told them otherwise.

Tide responded and advised Miss M to freeze her card in its app. It then stressed that Miss M shouldn't unfreeze her card unless instructed by one of its agents.

Tide went on to ask questions, including whether the card had been lost or stolen, and if anyone else had access.

Miss M responded to say that she couldn't freeze her card as she needed to use it and it hadn't been lost or stolen. Instead, someone else was using her social media account. Tide responded to say that Miss M's account was secure and that as long as the card remained frozen no further payments would be made using the card details.

However, while Miss M initially froze the card, she then removed that freeze. The sequence of events is below:

- £700 social media debit at 4.44 on 3 August
- £1,000 social media debit at 22.12 on 3 August
 - Card blocked at 7.58 on 4 August
 - Card unblocked at 22.15 on 5 August
- £2,009.33 social media debit at 14.09 on 6 August
 - Card blocked at 9.16 on 8 August
 - Card unblocked at 10.20 on 9 August.

Miss M complained on behalf of V Ltd as she felt these shouldn't have been allowed. Tide refunded the initial £700 disputed payment. But it refused to refund the other two disputed payments, because V Ltd hadn't followed its instruction to block the card and not to unfreeze it unless instructed by a Tide agent.

Tide acknowledged Miss M's comments that she needed the card for business purposes and had asked Tide to block any payments to the social media site. But it said it wasn't able simply to block one merchant from taking funds from the account on request. It said that it could see multiple attempts from the social media site to take funds from V Ltd's account which had been prevented during the times when the card had been blocked. But the £1,000 and £2009.33 payments had been made while the card had been unblocked.

Miss M brought V Ltd's complaint to this service where our adjudicator felt that Tide should refund the two transactions. She said that she accepted that V Ltd hadn't authorised the two disputed transactions which Tide hadn't refunded. So she considered whether or not V Ltd's decision to unblock the card was a fair reason for Tide to refuse a refund.

The adjudicator said that V Ltd had explained that it had incoming and outgoing payments, and thought these wouldn't be possible if the card was blocked. And Tide hadn't suggested cancelling the card and issuing a new one. It had just told V Ltd to block the card without giving any timescales. Nor did it tell V Ltd that if the compromised card was blocked, V Ltd could continue with other transactions by a different method. The adjudicator also said that she thought it was likely that if Tide had told V Ltd that it could access the funds by other methods, V Ltd wouldn't have unblocked the card. So she thought Tide should refund the two later disputed transactions.

Tide didn't agree. It said it hadn't argued that the two later disputed transactions weren't fraudulent. But if V Ltd had followed its instructions and kept the block on the card, the transactions wouldn't ever have taken place – which was proven by some attempts being unsuccessful while the card was frozen. It said the successful transactions only happened because of the customer's negligent behaviour, which was in breach of the account terms and conditions.

Tide set out the terms and conditions which it said V Ltd had breached. It added that it always asked customers to freeze a card themselves via the app, and it would only ever block or cancel a card on a customer's behalf in exceptional circumstances if the person couldn't do it themselves. Tide said that the first thing customers are advised to do – as happened here – is to freeze the card and not unfreeze it unless Tide advised it to. It said it had advised that no further payments could be taken from the card while frozen. So the customer was aware of the risk if they removed the block. And V Ltd had removed the block twice, which clearly showed negligent behaviour and ignoring instructions which had been provided to ensure the account was kept safe.

Tide asked for an ombudsman's decision.

My provisional decision

I issued a provisional decision to both sides where I reached the same outcome as our adjudicator, but expanded on the reasoning – giving both sides an opportunity to respond. My provisional findings are included below as they are relevant to the final decision I'm reaching.

What the relevant Regulations say

There are Regulations about disputed transactions, and the relevant ones for this complaint are the Payment Services Regulations 2017 ("PSRs"). In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. Here, the issue isn't whether or not V Ltd authorised the two later transactions which Tide refused to refund. Tide has accepted that all three of the transactions weren't authorised by V Ltd - and it refunded the £700 transaction at 4.44 on 3 August in line with that.

The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if a payment service user (here V Ltd) has failed with "gross negligence" to comply with their "obligations". The regulations say (in summary) that a payment instrument such as a card or the procedure used to initiate a payment must

be used in accordance with the terms and conditions governing its use and issue. These terms must be objective, non-discriminatory and proportionate. The payment service user must also notify the bank without undue delay if the payment instrument is lost or stolen and must take all reasonable steps to keep personalised security credentials relating to a payment instrument safe.

Here, Tide is making the argument that by 'unfreezing' the card as Miss M did, V Ltd failed with gross negligence to comply with its obligations under the terms and conditions here. Tide has provided us with the relevant terms which say:

17.3 You must ensure that:

- (a) each Tide Platform User takes all reasonable steps to:
 - (i) keep his/her Security Codes safe;*
 - (ii) ensure that access to the Tide Platform is kept safe; and**
- (b) each Tide Cardholder keeps his/her Tide Card safe.*

17.5 All Tide Transactions are processed by automated methods, and anyone who obtains access credentials to the Tide Platform or access to a Tide Card could use it to enter into Tide Transactions without your permission. If you, a Tide Platform User and/or a Tide Cardholder notices misuse, theft or unauthorised use of:

- (a) the Tide Card or a PIN or any other activity that makes you suspicious, you must (if available) freeze the Tide Card or cancel and reorder the Tide Card via the Tide Platform and/or (if not available) contact us using the member support function on the Tide Platform*

22.1 ... where:

- (a) a Tide Payment was not authorised by you or was incorrectly initiated or executed by us; and*
- (b) you have notified us using one of the methods set out in clause 26.4, without undue delay on becoming aware of the unauthorised or incorrectly executed Tide Payment and in any event:
 - (i) if you are a Micro-Enterprise or a Charity, no later than 13 months after the date the Tide Payment was executed,*
 - (ii) if you are not a Micro-Enterprise or a Charity, no later than 2 months after the date the Tide Payment was executed,**

we shall refund to you the full amount debited erroneously immediately and the amount debited without authorisation as soon as practicable and in any event no later than the end of the Working Day following the day on which we became aware of the unauthorised Tide Payment, unless we have reasonable grounds to suspect fraud and notify the appropriate authorities.

22.2 You will be liable for:

- (a) all losses incurred in respect of unauthorised Tide Payments made by Tide if you and/or a Tide Platform User has acted fraudulently, or has intentionally or has with intent or gross negligence not complied with its obligations under clause 17.3 and/or clause 17.4; and*
- (c) where clause 22.2(a) does not apply, up to £35 of any losses incurred in respect of unauthorised Tide Payments arising where you and/or a Tide*

Platform User has failed to keep the Security Codes safe and/or failed to stop the Tide Platform from being misappropriated, except where:

22.3 Except where you have acted fraudulently, you will not be liable for any losses incurred in respect of unauthorised Tide Payments where:

(a) you have notified Tide in writing, without undue delay, on becoming aware of the loss, theft, misappropriation or unauthorised use of any Security Codes or the Tide Platform and the failure by Tide to do anything resulted in the aforementioned loss

There is also a section of the PrePay Solutions terms that are relevant here:

11.10 - You will be liable for all Tide Card Transactions and PPS Payments that take place as a result of you, any Tide Platform User or Tide Cardholder acting fraudulently or failing to comply with this Agreement with intent or gross negligence. Any such Tide Card Transactions and PPS Payments and any fees and charges relating to such transactions will be deducted from the Available Balance on your Tide GBP E-Money Account.

Having read the terms, I can, to some extent, see why Tide feels that V Ltd has acted with gross negligence here. After all, it told Miss M what she'd need to do to prevent further losses like the ones already incurred here and then Miss M didn't follow its instructions. So that goes against what 17.5(a) above says. On that basis, I can see why Tide thinks it has grounds to say that V Ltd has been grossly negligent here.

That argument doesn't fully cover all the relevant considerations here though. We recently highlighted another section of the Payment Services Regulations to Tide:

*73.—(1) A payment service provider issuing a payment instrument must—
(f) prevent any use of the payment instrument once notification has been made under regulation 72(1)(b).*

The effect of this section of the PSRs outlines that Tide should have prevented any use of the payment instrument once Miss M notified it of the unauthorised use of the card. So in the individual circumstances of this case, there's a tension between Tide's terms (and what Miss M did in 'unfreezing' the card on V Ltd's behalf) and what Tide's wider obligations under the regulations are.

I note this 'freezing' process is a mechanism that Tide has chosen to specifically mention in its terms and conditions, rather than a process that is specifically mentioned in the relevant regulations. I can see why, in many cases, a process like this may help customers. But as with any process, it won't always lead to a fair outcome in certain circumstances.

I think that's what's happened here. While V Ltd didn't strictly follow Tide's process, Miss M explained to it why it wouldn't be practical to do that at the time, based on the fact that V Ltd needed to use the card for business reasons. Tide is a business that specifically caters for small businesses and will be aware that customers like this are unlikely to have more than one business account to use. Yet with that in mind, no timeframe was placed on when Tide would resolve this by and neither were alternative options given, so V Ltd could make payments or use the account while it was frozen.

For example, I can't see that Tide offered to cancel or reissue the card, or explained how the account could be used in other ways. Ultimately Tide knew that the transactions here stemmed from Miss M's social media being compromised and was aware there were

constant attempts of making more payments (many of which were unsuccessful). So it's difficult to see that strictly insisting on freezing the card as the only solution was a proportionate response to what Miss M told Tide.

The effect of this was that V Ltd was left in limbo at a time it needed to use the account for business purposes and Miss M has explained that this was why she 'unfroze' the card. Against this very specific set of circumstances, I don't think Miss M acted with gross negligence in doing what she did on V Ltd's behalf.

So in these circumstances, it doesn't feel fair for Tide to rely on V Ltd 'unfreezing' the account as a reason to pass on liability for the transactions. I say this where the liability for preventing use for the further use of the card here is placed on Tide by the PSRs and the transactions were made in the same way as the ones Miss M notified Tide of.

Tide has referred to Section 72(3) of the PSRs which explains that a payment service user must take all reasonable steps to keep safe security information relating to a payment instrument or account. It says that by removing the block, V Ltd hasn't complied with the regulation. But on balance here, I don't think this overrides Tide's obligation to prevent further use of the card once Miss M notified it of the issues she was facing here.

That means I think Tide should refund the two transactions of £1,000 and £2009.33. As V Ltd has been deprived of this money, it should also pay simple interest of 8% from the date the payments debited the account to the date of any refund here.

Neither Tide nor Miss M on V Ltd's behalf responded to my provisional decision, so now I have to reach 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.

In doing so, neither party has provided any response to my provisional decision. On that basis, I see no reason to depart from the findings I reached in this on what's fair and reasonable to resolve this complaint. So it follows that Tide now need to do what I outlined would be fair in that decision.

My final decision

My final decision is that PrePay Technologies Limited trading as Prepay Solutions and Tide should refund the two transactions of £1,000 and £2009.33. As V Ltd has been deprived of this money, it should also pay simple interest of 8% from the date the payments debited the account to the date of any refund here.

Under the rules of the Financial Ombudsman Service, I'm required to ask V Ltd to accept or reject my decision before 13 October 2022.

James Staples
Ombudsman