

## The complaint

A company, which I'll refer to as S, complains that ClearBank Limited (trading as Tide) won't refund transactions it didn't make.

## What happened

Mr S, one of the directors of S, received a call from someone purporting to be from Amazon's cyber security team. Mr S recalled he was told that someone had stolen his identity and opened another Amazon account – and that his banking details had been compromised and money had been taken. They asked for his help in sending money to entrap the fraudsters, saying this would allow Amazon to get back his lost funds and reward Mr S for his cooperation.

They convinced Mr S to download remote access software on his devices and showed him news articles to corroborate what they were telling him. Afterwards they proceeded to set up the entrapment by sending money from his personal account. These were blocked by his bank and when Mr S refused to cooperate, the fraudsters moved money to S's account with Tide where they made two payments totalling £24,990.

S raised these payments with Tide, who declined to refund them. Unhappy, S brought his complaint to our service to investigate. During that time, Tide offered to refund 50% of the money lost to the scam, which S rejected. So the complaint has come to me 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.

- Tide accepted these were unauthorised transactions. However, in line with the Payment Services Regulations 2017, it refused to refund them because it asserts Mr S failed with gross negligence to comply with the terms of the account and keep S's personalised security details safe.
- Having considered the circumstances carefully, I'm not persuaded Tide has shown Mr S failed with gross negligence. Or, in other words, that he acted with *very significant* carelessness; *seriously* disregarded an *obvious* risk; or acted *so far below* what a reasonable person would've done. I'll explain why.
- The caller pretended to be from Amazon's cyber security team and had information about his personal bank account – and ultimately, they led him to believe that his money was at risk. Taking this into account, I can see how Mr S initially trusted the caller and why he felt compelled to follow their instructions. Tide has raised some understandable points about things he could've questioned. But I'm mindful that it's easy to be critical of someone's actions with the benefit of hindsight. And here, Mr S was acting under pressure as someone who, like most people, wasn't an expert in cyber security. And he ultimately thought he was doing the right thing and he could

lose out if he didn't act. So, in the context of this scam, I'm not persuaded Tide's points mean he showed a *very significant* degree of carelessness.

- Tide also submit that codes were entered on Mr S's device to complete the payments. But given they'd remote access on his phone, I think it's likely that the fraudsters would've intercepted these and completed the steps themselves. So I'm not persuaded this meant Mr S failed with gross negligence.
- Tide have also commented on how Mr S watched this all happened over some time, so he should've acted sooner to stop the remote access. Having listened to the calls between Tide and Mr S, it sounds like he saw what they were doing when they were setting up the payment to 'entrap the fraudsters' – that makes sense, as it was part of the narrative of the scam. But it's not clear he watched everything that took place afterwards. From our experience dealing with similar scams, we know how often fraudsters will manipulate or mask someone's screen when they're using remote access – so they don't realise the extent of what's going on. I find it likely they'd have done that here, rather than risk Mr S's intervention.
- And even if Mr S was privy to some of it, I'm conscious that lots of people wouldn't know how to effectively respond and stop fraudsters with remote access – particularly when they're panicked by what's going on. So I'm not persuaded it would mean that Mr S's actions fell *so far below* what a reasonable person would've done.
- It follows that I'm not convinced Tide has shown Mr S failed with gross negligence. So S isn't liable and Tide needs to put things right, by refunding S for these unauthorised transactions alongside interest to compensate it for the time it's been out of pocket.
- Tide has questioned whether it ought to be fully liable for these transactions given that money was transferred from a different bank. I've considered how under the PSRs, it's liable to restore S's account for these unauthorised transactions. And I don't consider this will unjustly enrich S – because it's not been compensated for these losses elsewhere. So I'm satisfied that it's fair to require Tide to refund the transactions in full.

### **My final decision**

For the reasons I've explained, I uphold S's complaint. ClearBank Limited must:

- Pay S the total of the unauthorised transactions, less any amount recovered or already refunded.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised transactions to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 13 April 2023.

Emma Szkolar  
**Ombudsman**