

The complaint

D says ClearBank Limited, trading as Tide, should refund the money they lost as the result of an authorised push payment (APP) scam.

Mrs N has brought this complaint on behalf of D, for ease of reading I will refer to Mrs N in this decision.

What happened

In summary, Mrs N received a one-time password (OTP) from Tide to authorise a payment on 14 November 2021. She ignored it as she was not expecting it. She then received a call from Tide, she believed, saying it had noticed some suspicious payments about to debit her account. The call cut off but as she was concerned Mrs N blocked her account.

The caller rang back and had sufficient information to reassure Mrs N he was from Tide. Mrs N was then transferred to another party who explained that to refund the suspicious payments Mrs N would first need to approve them. There were three payments to two different merchants:

payment	value, £	method	merchant
1	2,151.98	Apple Pay	Dimprice.com
2	2,939.96	Apple Pay	Dimprice.com
3	2,380.98	Apple Pay	Laced

Worried the money would leave her account if she did not do as instructed, Mrs N provided the caller with the authorisation codes that were sent to her by text. All three payments debited her account on 14 November 2021 within an hour. The next day, when no refunds came through, Mrs N realised it was a scam and contacted Tide. I note merchant three refunded £1,640 directly to Mrs N on 19 November 2021.

Tide refused to refund the payments saying Mrs N had authorised the payments.

Our investigator upheld Mrs N's complaint. She said Tide ought to have intervened before payment 2 and had it done so it would have prevented Mrs N's subsequent losses. She said Tide must refund Mrs M £5,320.94, less any merchant refunds, and add simple interest of 8% a year from the date of the payments to the date of settlement. She didn't think Tide could have recovered payment 1 as a chargeback would most likely have been successful.

Mrs N accepted this assessment but Tide disagreed.

It said, in summary, Mrs N had shared the OTPs and was aware payments would be made; she knew the call was not from a known Tide number; it's not possible a code was sent to Mrs N via its app; Mrs N has kept none of the communication she refers to; she ignored red flags such as accepting the transactions needed to be approved to then be refunded; and one of the merchants has already refunded £1,640. In the round, it argues Mrs N had concerns yet went ahead and this is gross negligence.

Our investigator explained it is not in dispute the payments were authorised by Mrs N, and that gross negligence is a consideration for complaints about unauthorised transactions. She said she was upholding the complaint as Tide ought to have detected out of character activity when there was an attempted payment of £34,999 prior to payment 2. Had it intervened then it could have stopped payments 2 and 3. Finally, she was satisfied Mrs N thought it was a genuine call from Tide based on the information the caller had and a spoofed text. She added it is not uncommon for victims of a scam not to have saved the relevant messages.

Tide still disagreed and asked for an ombudsman to review the complaint.

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.

Having done so I am upholding Mrs N's complaint in part.

There's no dispute that Mrs N made and authorised the payments. Mrs N knew why she was making the payments. At the stage she was making these payments, she believed they had to be authorised so that the related refunds could then be processed. I don't dispute Mrs N was scammed and she wasn't making payments for the reason she thought she was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Tide has an obligation to follow Mrs N's instructions. So in the first instance Mrs N is presumed liable for her loss. But there are other factors that must be taken into account.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. This means I think that Tide should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

In this case I think Tide ought to have taken additional steps before processing payment 2. After the first payment at 12.03pm Mrs N blocked her card when the initial call with the scammers dropped. But she was then persuaded by them to lift the block at 12.27pm due to the amount of accurate information they had about her account. A payment of £34,999 was then attempted by the scammers at 12.31pm. It only failed as it was over Mrs N's daily limit.

Tide ought to have detected this attempted payment as out of character and unusual based on Mrs N's account history. Had it done so, and contacted Mrs N, I am certain it would have broken the spell of the scam. Mrs N has said she was unsure of what she was being asked to do – but as she had never needed to speak to Tide and wasn't sure of its usual process

she complied with the scammers' requests. In such circumstances - and if the attempted high value transaction had been queried with Mrs N – I am confident Tide would have effectively prevented Mrs N from sharing any further OTPs and suffering any loss beyond payment 1.

It follows I find had Tide intervened as it should have, the scam would have stopped before payment 2. So I now need to decide what Tide must do to put things right.

In response to the investigator's assessment Tide argued that Mrs N followed the callers' instructions despite being unsure - and so I assume it would argue she should share some responsibility for her loss. But I am not persuaded that is the case in these circumstances.

Mrs N has accepted she was unsure of the process the scammers said she must follow to facilitate the refunds, but she has explained this was due to her lack of previous interaction with Tide. She balanced this out against the information they had about her account and the messages she received. Unfortunately I have not had sight of the messages, but this does not change my conclusion and I find her justification of why she went ahead to be reasonable. It's what I could fairly expect a 'lay' person to do in the circumstances. Tide needs to take into account that it is the expert in fraud prevention, and not Mrs N.

Overall, this means I am instructing Tide to refund the full value of payments 2 and 3, adjusted only for the merchant refund on payment 3.

I have then considered whether Tide ought to have done more to help Mrs N recover payment 1 as she asks. It could have looked to raise the dispute as a chargeback. In certain circumstances card issuers (so here Tide) can request refunds from sellers by raising a chargeback claim – but there's no obligation on an issuer to do this. This system has rules which means there are only certain grounds under which a chargeback can succeed. So in this case I need to decide whether Tide acted fairly and reasonably in its decision not to present a chargeback on behalf of Mrs N. I have already found that Tide must refund payments 2 and 3, but my finding that follows would have been equally applicable to those transactions, if relevant.

Tide said a chargeback claim would have been unsuccessful as the transaction was authorised. I accept the reason code 'unauthorised transaction' would have failed – as I clarified at the start of my findings it is not in dispute that all payments were authorised. Tide could have considered another 'reason code' but I think this would have most likely failed too. Given the fraudulent nature of the transaction Mrs N had no evidence to support the payment, such as an agreement, invoice or order form. And the merchant most likely would have had evidence of delivery – albeit to the scammer. So, overall, I think Tide's decision not to raise a chargeback claim to try to help Mrs N recover payment 1 was fair in the circumstances, albeit that I don't find it made its decision for the right reason.

Putting things right

Tide must pay Mrs N £5,320.94 (the sum of payments 2 and 3) minus the merchant refund of £1,640 on payment 3. It should add 8% simple interest a year from the date of the payments until the date of settlement*.

*HMRC requires Tide to deduct any tax from any award of interest. It must give Mrs N a certificate showing the deductions if she asks for one.

My final decision

I am upholding Mrs N's complaint in part. ClearBank Limited, trading as Tide, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N, on behalf of D, to accept or reject my decision before 27 April 2023.

Rebecca Connelley
Ombudsman