

## The complaint

Ms S is bringing a complaint on behalf of company G. She's unhappy that ClearBank Limited trading as Tide decided not to refund G, in full, following payments as a result of a safe account "Authorised Push Payment" (APP) scam

## What happened

Ms S was contacted by scammers pretending to be from Tide. They had "spoofed" Tide's telephone number making it appear to Ms S that the call was genuine. They also sent a text message to confirm who she was speaking to, and this also appeared in the chain of other texts she had genuinely received from Tide (known as "smishing"). The scammers said G's account was under threat and she needed to move the money to a safe account. She followed the scammers instructions, making several payments across a number of days to different accounts.

Date	Time	Amount	Outcome of payment attempt	Interaction between Tide and Ms S
10/05/22	19:34	£6,100	Tide paused this payment for checks	
10/05/22	20:01	£9,500	Unsuccessful – payment returned	
10/05/22	20:05	£9,500	Unsuccessful – payment returned	
10/05/22	20:25	£9,500	Successful	
10/05/22	20:29	£9,400	Successful	
10/05/22	20:35			Paused Payment reviewed by Tide
11/05/22	08:26			Tide sent message to Ms S saying payment had been paused
12/05/22	11:45	£4,000	Successful	
12/05/22	14:30			Tide asks Ms S questions about payments
<b>13/05/22</b>	<b>11:15</b>	<b>£9,500</b>	Successful	
<b>13/05/22</b>	<b>11:22</b>	<b>£9,400</b>	Successful	
<b>13/05/22</b>	<b>11:32</b>	<b>£8,000</b>	Successful	
<b>13/05/22</b>	<b>11:42</b>	<b>£6,500</b>	Successful	

Tide paused the first payment for a check but didn't immediately contact Ms S. In the meantime, Ms S continued to make payments following the scammers instructions.

Below is a table setting out the events of the scam, payments from G's account and Tide's actions during this time.

When Tide did contact Ms S it asked her some questions about payments on G's account, including several of the scam payments. When Ms S responded she explained that some of the payments had been made to a new account - that Tide had sent her the details of - following the account being targeted by fraudsters. Tide didn't pick up on this and she made further payments to the scammers. It was only a few days later when Ms S looked to see if a new account existed that she contacted Tide again and realised she'd been scammed. Tide considered the scam and its actions and concluded it ought to have prevented the scam from 12 May at 14:30pm when it made contact with Ms S to ask questions, but didn't explain the safe account contact she'd received hadn't come from Tide. It said on reflection that if it had explained this, it could have exposed the scam and prevented any further losses from G's account. It offered to refund G's losses from that point onwards totalling £33,400 plus 8% simple interest and £150 as an apology for the distress and inconvenience caused to Ms S. I've highlighted the refunded payments in bold in the table above.

After Ms S received the above offer from Tide, she asked that we look into the complaint and consider G's remaining losses. The investigator upheld the complaint. There was some correspondence between the investigator and Tide. She ultimately concluded that Tide had picked up on the first payment Ms S attempted to make but didn't take the appropriate steps to intervene at that point. And Tide has since said it paused that payment for reasons that we would consider typical of a safe account scam – a large transfer to a new payee with her name as the reference.

The investigator concluded:

- If Tide had interacted with Ms S at the point of the first paused payment, it ought to have been able to expose the scam at this point as well.
- She didn't think a deduction ought to be made to the refund amount, because Ms S had been tricked by a sophisticated scam and didn't act negligently when she thought she was dealing with Tide and moving G's money to keep it safe.
- She didn't think Ms S had been negligent by continuing to make payments after the initial unsuccessful payments.
- Payments bounce back for any number of reasons and the scammers provided reasonable explanations for this at the time.
- Whilst a series of payments had been made here (rather than a one-off payment) scammers will often convince consumers they need to do this (to avoid the payments being detected).
- Whilst Ms S would have been aware how to contact Tide if she had any concerns – Tide hadn't made it clear (when it did pause the first payment) that Ms S needed to be in touch or ought to have concerns about the payment – and therefore the instructions she was receiving from the scammers to move her money still seemed reasonable.

Tide ultimately asked for an ombudsman to review the complaint saying the scam was highly unusual, taking place over a number of days and wasn't a single one-off payment. There were multiple red flags about what Ms S was being told to do that she ought to have identified. And it didn't fit with the typology of the usual scams Tide sees so there weren't numerous alerts from its systems.

## 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've come to the same conclusions as the investigator for largely the same reasons.

It's not in dispute that Ms S has been defrauded. The payments made to the scam were 'authorised'. Ms S says she followed the instructions of the scammers to move G's money to keep it safe. So, even though she didn't intend the payments to go to a fraudster, the payments were 'authorised' under the Payment Services Regulations. Tide had an obligation to follow the payment instructions it received, and G is presumed liable for the losses in the first instance.

But that's not the end of the story. Taking 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, I consider 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.
- 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 (amongst 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 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.

And it appears Tide did have measures in place as it paused Ms S's first payment and eventually made contact with her, asking questions in an attempt to protect, detect and prevent scams. That contact turned out to be unsuccessful in preventing further losses to G's account despite Ms S saying she had been provided new account details because the account had been "targeted by fraud". But Tide has recognised that it could have done a better job when it contacted Ms S and it has agreed to refund all payments, after this point, and I think this is fair and reasonable in the circumstances.

But Tide has said this was the first point it could have intervened and so it wouldn't be refunding the payments made before. I have gone on to consider those payments in the context of what Tide knew at the time Ms S made them. And, having done so, I agree with the investigator that these need to be refunded by Tide as well.

Tide's records show that when Ms S attempted the first payment, as part of this scam it was paused by Tide. And Tide has said that's because *"it was a transfer in from one of the member's accounts and then intended to be a transfer out to another of her accounts"*. And from looking at the payment it was to a new payee, for a value of £6,100 and the recipient given included Ms S's name. These are all factors that are common in safe account scams. Whilst Tide paused the payment it didn't review it until an hour later. During which time Ms S made two further payments, for higher amounts which were then returned. These payments weren't paused or stopped by Tide despite it stopping the previous payment for a lesser

amount. We don't know why these payments were returned. But a further 30 minutes later (and almost an hour after Tide paused the first payment) Ms S was able to make two successful payments to the same payee for a combined total of £18,900 – (more than triple the amount it initially paused) to a new payee. These payments exhibited typical safe account scam red flags and something I think Tide ought reasonably had concerns about. And So I think it ought to have paused these payments as well. If it had intervened at this point and asked Ms S questions then I think the scam would have been exposed. Ms S would have likely responded, as she did at a later point, to say they were transfers to a new account with details she'd been given by Tide – and Tide ought to have recognised it was a scam at this point.

Tide has said the timeline of this scam is unusual as Ms S carried on making payments across three days. But I think if Tide had looked at what was happening as soon as it paused the first payment it ought to have recognised that Ms S was making payments from G's account with all the hallmarks of a safe account scam.

Tide has argued that there were red flags that Ms S ought to have picked up on and so it shouldn't be liable to refund all of her losses. But I think it hasn't fully considered the impact of the spoofed telephone number and text message she received which caused Ms S to think she was speaking to Tide. I don't think a paused payment or two returned payments were events that would have caused Ms S to think the call from Tide wasn't genuine. And the message from Tide to say the payment had been paused didn't ask her to make contact or say that she needed to be concerned about the payment in anyway. So overall I'm not persuaded that Ms S could be considered as negligent when she made these payments or that any deduction needs to be made from the refund from Tide.

### **Putting things right**

- ClearBank Limited needs to refund G its remaining losses, totalling £22,900
- Pay interest at a rate of 8% simple interest from the date of the payments to the date of settlement.

### **My final decision**

I direct ClearBank Limited to refund G as set out above. And I uphold G's complaint against ClearBank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 6 June 2023.

Sophia Smith  
**Ombudsman**