

The complaint

A company, which I'll refer to as T, complains that ClearBank Limited trading as Tide ('Tide') won't refund the money it lost in a scam.

Mr S, who is a director of T, brings this complaint on T's behalf.

What happened

What Mr S, on behalf of T, says

Mr S says that on 8 June 2022, while he was working, he received a call from someone who said they were calling from Tide. The caller said there were some irregular attempted payments to known companies and asked if Mr S had made them. He confirmed that he hadn't. Mr S received a further call later that day from the same number to say T's account would be frozen while Tide monitored the account overnight.

The following day Mr S received a message on the same thread he'd received messages from Tide since 2019 saying "*FRAUD ALERT: Your account review has been successfully completed, an advisor will be giving you a call shortly regarding the details*". Very soon after, Mr S received a call from the same Tide number as before. The caller told him T's account had been breached and he needed to transfer funds to a new account to keep them safe. On the instructions of the caller Mr S made the following payments from T's account to the account details he was provided with:

Date	Time	Amount
09/06/22	19:23	£40,000
09/06/22	19:55	£25,000
09/06/22	20:00	£13,644
09/06/22	20:26	£13,860.98

Mr S says that shortly after making the transactions he became concerned and emailed Tide at 20.54 – just over 30 minutes after completing the last transaction – to say he thought he might have been scammed. He also contacted Tide through its in-app chat at 21.34 but didn't receive a response until the next day.

Tide was able to return the payments of £25,000 and £13,644 to T. Mr S says the other two payments were made to Tide accounts but haven't been recovered.

What Tide say

Tide noted that it hasn't signed up to the Lending Standards Board Contingent Reimbursement Model Code (CRM Code), so it doesn't apply. It went on to say that it should contact the payee bank promptly to try to recover the funds but didn't do so as quickly as it could and didn't respond to some of Mr S's queries in good time. In recognition of these factors Tide offered T £200.

Mr S wasn't happy with Tide's response and brought a complaint to our service. He says he doesn't understand how Tide can acknowledge failures in their process to recover funds but still not reimburse the transactions. He also says Tide should have intervened as the

payments were unusual and that the service Tide provided him with was poor. Mr S says his business went through a difficult time during the pandemic and the success of it is dependent on recovering the funds T lost in the scam.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full. She said that Tide should have intervened and asked questions about the payments as they were unusual and out of character. This was particularly so given the payment reference for the first £40,000 payment was a fast-food takeaway. Tide should also have provided warnings and explained what number spoofing is. Had it done so, Mr S would have provided honest answers and the scam would have been uncovered. The investigator thought the payment made to reflect the poor service provided was fair.

Mr S agreed with the investigator's findings, but Tide didn't. It referred to the fact the investigator's view was based on hindsight. In summary, Tide said:

- The payments weren't unusual, and its transaction monitoring systems didn't flag them. A payment of over £30,000 was made shortly before in May 2022 and, after the first payment of £40,000, future scam payments were for less than this figure. There was a high velocity of payments from the account and there were also large credits into the account.
- The payment reference need not have related to the takeaway – it could have been initials or another company.
- It only provides business accounts and given the nature of Mr S's business (commercial building construction) large payments are commonplace.
- T was strongly affected by the pandemic. After it, spending on the account increased considerably.
- Between September 2019 and June 2022, 79 new payees were created and over a thousand payments were made to those payees. Setting up a new payee wasn't unusual, and neither were one-time payments to new payees.
- Tide provided links to a blog and other sources available to Mr S which provided scam advice. It went on to say Mr S had reported minor fraud in the past and so was aware of the possibility of being scammed.
- Even if Tide had called or messaged Mr S it's unlikely it would have made a difference as Mr S was on the phone to scammers when making the payments.

The complaint has been passed to me to decide.

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 deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

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. 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 Tide 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 made 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.

In this case, I need to decide whether Tide acted fairly and reasonably in its dealings with T/Mr S when the payment requests were made, or whether it should have done more than it did. I have considered the position carefully.

Did Tide act fairly and reasonably when it made the payments?

Having considered T's account activity for the 12-month period before the scam I agree with the investigator that the first scam payment was so unusual and uncharacteristic that Tide should have stopped it and intervened to ask Mr S some questions about it.

I've taken into account that this was a business account and of all the comments made by Tide. But I think the payment was so significant compared with T's usual account activity that Tide needed to do more. The largest payment from the account before this was for just over £31,000 and this payment was out of character with previous transactions which were much lower in value. So whilst T's business was one that might be associated with high value payments like the £40,000 scam payment, this hadn't been the case for T. I'm also not persuaded that the fact T received high value credits means Tide ought not to have had concerns. Tide did nothing to warn Mr S of scam risks during the payment journey. I don't consider the scam information in blogs and other areas referenced by Tide went far enough.

My findings in respect of the first scam payment mean that I don't need to consider subsequent payments. But as the payments increased and T's balance was depleted in line with a safe account scam, I think there was even more reason for Tide to satisfy itself Mr S wasn't the victim of a scam.

I've thought about what would have happened if Tide had intervened as I think it should. I can't see that Mr S was given a cover story or told he was helping to catch fraudsters so I think he'd have been honest about what happened, and the scam would have rapidly been uncovered. And whilst I wouldn't expect Tide to scrutinise the reference, once the payment was discussed I think Tide should have asked about it. Tide said to this service that a payment of £40,000 to a potential fast food restaurant seems unusual.

I note that Tide has suggested that as Mr S was on the phone to scammers it wouldn't have been able to speak to him. But Tide should have held the payment until it was able to speak to Mr S or until it got a response in its chat. The fact that Mr S didn't respond to a previous message doesn't absolve Tide of its responsibilities.

I've considered whether Mr S, on behalf of T, should bear some responsibility for the loss. I don't think there should be a deduction though. I say this because Mr S was called from a spoofed number and received a text from the scammer in the usual Tide thread saying he would receive a call. I think these factors are very persuasive, particularly in the absence of any warnings about what safe account scams like this one look and feel like. When Mr S received the call he'd been advised to expect, he was taken through security as he'd expect. I'm also aware that scams of this nature are designed to make victims panic and move funds quickly to protect them – which is what happened here.

Recovery

Because I'm asking Tide to refund T's losses in full, I don't need to consider the recovery of T's funds. But part of Mr S's complaint related to the service he was provided with when he reported the scam and the time taken for Tide to take action, so I've looked into these aspects of his complaint.

I can see that Mr S sent an email to Tide at 20:54 on the day the scam payments were made in which he said he thought he might have been scammed and was on hold on a call. He asked if the telephone number he'd been called from was Tide's and for a call back. Mr S didn't receive a call that night, but Tide acknowledged Mr S's email and asked him to contact Tide via the chat in the app at 05:10 the following day.

I don't think Mr S was reporting the scam when he emailed, as he wasn't sure if he'd been scammed. But it's clear he needed support that he didn't get. Mr S contacted Tide via its chat at 21:43 saying he had an emergency and wanted to report fraud. At 22:15 Tide said there may be a delay in its response time and then at 07:12 the following morning Mr S was asked to provide details of the transactions that were fraudulent. The information was sent at 08:10 and the receiving accounts were blocked soon after. I don't think this was good enough and think Tide's failures made the recovery of T's funds more difficult and added to the inconvenience T suffered.

Very soon after Mr S made the £40,000 payment the funds were removed from the receiving account so I don't think it would have made a difference if Tide had acted more promptly – as I think it should have. But the position was different in respect of the other payment that wasn't returned (£13,860.98). The majority of these funds were removed overnight, which could have been avoided if Tide had acted with more urgency.

T is a different legal entity to Mr S, so I can't make an award to T for Mr S's distress (and T can't suffer distress). I can only consider an award for the additional inconvenience Tide's actions have caused. I'm satisfied the £200 payment Tide has already offered fairly reflects this and am not awarding any more. If Tide hasn't made this payment, it should do so now.

My final decision

For the reasons stated, I require ClearBank Ltd to:

- Pay T £53,860.98;
- Pay interest on the above award at the rate of 8% simple per year from the date of the transactions to the date of settlement.
- Pay £200 to T for the inconvenience caused if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 26 July 2023.

Jay Hadfield
Ombudsman