

The complaint

Mr M is bringing a complaint on behalf of company N. He is unhappy that TIDE PLATFORM LTD decided not to refund N, following payments made as a result of an 'Authorised Push Payment' (APP) scam.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them all in great detail here. But in summary, it's not in dispute that N was contacted by a fraudster, who had intercepted an exchange of emails it had with a property agent, regarding a property rental. The fraudster tricked N into making the following payments, totalling £6,000, that it thought were towards the rental, but that were actually made to an account controlled by the fraudster;

8 February 2022 @ 16:38	£2,250
8 February 2022 @ 16:58	£3,750

N realised it had been scammed, when the genuine property agent confirmed it hadn't received the money.

N reported the matter to Tide, but it issued its final response letter in May 2022, not upholding the complaint. In summary it didn't feel it was liable for N's loss. But, it said it was disappointed with the level of service it provided and offered £50 for this. Tide did contact the beneficiary bank (the bank to which the payments were made) but was only able to recover £1.65.

Unhappy with Tide's response, N brought the complaint to our service. One of our Investigator's looked into things and thought the complaint should be upheld. In summary, while he didn't think Tide had done anything wrong in allowing the first payment to be progressed, he thought at the point N made the second payment, it was out of character for the account. In view of this he thought this ought to have caused Tide some concern and that it ought to have intervened. It was our Investigator's view that had Tide intervened and spoken to N before allowing this second payment to be made, the scam would have come to light and N wouldn't have lost the money from the second payment. Our Investigator thought Tide should refund the amount lost from the second payment, along with interest.

Tide didn't accept our Investigator's view. In summary it didn't think it was relevant that the payments were out of character, as N had confirmed it had made the payments, it added that N had transferred money into the account shortly before making the payments, so there was no reason why it would consider that suspicious.

It added that even if it had contacted N, N would have told it the payments were legitimate, so it questioned how Tide would have known there was an issue. Tide added that N had called the intended recipients between the two payments, but questioned why it hadn't called the intended recipients when it had received an email to say the bank details had changed.

As agreement couldn't be reached the complaint has been passed to me for a 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.

Having done so, I agree with the conclusions reached by the Investigator for the following reasons:

- It isn't in dispute that N authorised the disputed payments made to the scammer from its Tide account. As such the starting position is that Tide ought to follow the instructions given by its customer in order for legitimate payments to be made as instructed.
- However, Tide ought to be aware of this service's approach in expecting it to have been monitoring accounts to counter various risks, have systems in place to identify unusual transactions or other indicators that their customer is at risk of fraud; and in some situations, make additional checks before processing payments or to decline them altogether to protect customers from possible financial harm from fraud or scams.
- Having looked at the operation of this account, in the months leading up to the scam, I agree with our Investigator's opinion that at the point N was making the second payment, there was enough going on to have alerted a responsible, regulated, payment provider such as Tide, that the payments being made were unusual and uncharacteristic. I say that because the payments were significantly higher than any other payments, there were large value payments in quick succession, and these were to a new payee. While it's finely balanced, I'm satisfied an intervention wasn't necessary for the first payment. But given the second transaction was for a higher amount, so soon after another high payment and to a recently set up payee, I think there was, by now, enough going on that Tide ought to have intervened before allowing this second payment to have been processed.
- I'm persuaded that if Tide had done so and asked N the purpose of the payment, it would have confirmed that it was relating to the rental of a property. As professionals in these matters, Tide ought reasonably to have been aware of the common tactics used regarding property purchases and rentals, so I reasonably would have expected it to have asked N how it had received the payment details and followed this by asking if N had confirmed the payment details with the seller over the phone.
- Tide could have explained the prevalence of email intercept scams with N and how they worked (including details such as genuine emails being intercepted and new bank details being provided). Tide could have asked N to contact the property agent in person or on a trusted number to confirm that the payment details were correct. I'm satisfied N would have likely taken this step to protect themselves, given the presence here of the hallmarks of this particular type of scam. I'm persuaded a meaningful warning and suggestion such as this from Tide would have likely exposed the scam and prevented N's loss, from the point it was making this second payment.

I've also considered whether N should be held partly responsible for its loss, but I don't consider it should. The emails from the fraudster were almost identical to genuine emails received and N was expecting to make a payment, so it wouldn't have come as a surprise. This was a clever and sophisticated scam, and I'm not persuaded N can be said to have

acted negligently by believing the payment details came from the genuine agent it was in contact with. I also don't think the fact that N called the agent in between the payments is enough to say it should carry any responsibility. At the time it didn't realise it was falling victim to a sophisticated scam and wasn't aware that fraudsters could intercept genuine chains of emails, so I don't think I can fairly or reasonably have expected it to have questioned the change in bank details.

I've considered whether Tide did all it could to try and recover the money N lost. From the evidence I've seen the majority of funds were removed from the beneficiary bank account soon after they had been received, so I don't think Tide has missed an opportunity to recover more funds than it did.

Finally, I've considered the compensation that Tide paid N for the delays and incorrect information that it was provided. I recognise N has fallen victim to a cruel and callous scam. But I think it's important to highlight that the vast majority of the inconvenience caused by this event was caused by the fraudster. And it isn't reasonable to hold Tide liable for that. With this in mind I think the £50 Tide has already paid is fair and reasonable in the circumstances.

Putting things right

For the reasons explained above TIDE PLATFORM LTD should now;

- refund N £3,750 (being the loss of the second payment).
- pay 8% interest on this amount, from the date of the transactions to the date of settlement.

My final decision

For the reasons set out above, my decision is that I uphold N's complaint against TIDE PLATFORM LTD in part and order it to pay the redress I have indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask N and N to accept or reject my decision before 1 September 2023.

Stephen Wise
Ombudsman