

## **The complaint**

Mrs W is a sole trader, trading as L. She complains that Clearbank Limited (trading as Tide) hasn't refunded money that was lost from L's account as the result of a scam.

Tide branded accounts are provided by Clearbank Limited, but for convenience and clarity in what follows I will refer to Tide.

## **What happened**

The circumstances that led to this complaint are well known to both parties, so I will summarise the relevant facts.

L holds an account with Tide, with Mrs W as the authorised signatory. On 11 September 2022, Mrs W received a call from someone claiming to be from Tide's fraud team. Unfortunately, and unknown to Mrs W at the time, she was in reality interacting with a scammer.

The caller had been able to make it appear that the call originated from the number on the back of Mrs W's Tide card (a fraud technique known as number spoofing).

The caller said L's account was at risk of fraudulent activity and instructed Mrs W to transfer the funds in it to another Tide account to keep the money safe.

Mrs W followed the instructions she was given, making three faster payments in quick succession. Within 12 minutes this cleared the full account balance. These payments were for the sums of £9,950, £8,500 and £4491.54. All three went to a single payee, which was another Tide account that Mrs W was told was the new account for L.

Mrs W then received a call from another number. This time the caller was supposedly from another financial firm with whom she held an account. But this time when she checked the number that appeared on caller ID, it was listed as the contact for that firm's overseas wealth management arm – which she knew couldn't be right. She realised that the earlier caller might not have been legitimate either and reported what had happened to Tide.

When the scam was reported, Tide tried to recover L's money. It was able to retrieve a total of £17,946.64, leaving an outstanding loss of £4,994.90.

Tide declined L's claim for a refund of the remaining sum. It maintained its position when L complained. In its final response, it said Mrs W had authorised the disputed payments and there was nothing more it could have done to have prevented the loss. It explained it was not feasible to stop and check every single payment and it had adequate systems in place.

Our Investigator reviewed everything. She recommended the complaint be upheld. The Investigator highlighted that the payments were for much higher values than had been usual for L's account. She also thought draining the account balance stood out. In all she thought Tide ought to have been concerned enough to intervene and warn Mrs W this could be a scam. She thought Tide would have been able to uncover the scam if had contacted Mrs W

to question her about the reason for the payments. She noted the sophistication of the scam and believed Mrs W's actions were reasonable in the circumstances.

Tide offered a 50% refund in response to the Investigator's view. It said that business customers do make bigger payments from time to time and pointed out it has a difficult balance to strike between allowing genuine business activity and detecting potential irregularities. However, it accepted it could have done more to monitor these specific transactions given the concerning factors our Investigator had highlighted. Nonetheless, it didn't agree with the Investigator that it should fully reimburse L. It said Mrs W should take some responsibility too.

Tide highlighted that in making the payments Mrs W had to proceed past a warning saying that the payee's account name didn't match the name she'd input. And it pointed out that the wording of the one-time passcode texts sent to Mrs W's mobile number included wording saying Tide would never call asking for funds to be moved. It thought Mrs W shouldn't have gone ahead having seen these warnings.

L didn't accept Tide's offer, and our Investigator didn't agree with Tide that Mrs W should share responsibility.

In light of this disagreement, I have been asked to reach a final decision on the matter.

### **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, and despite what Tide has said and the evidence it has provided, I've concluded that Tide should refund the remaining sum L lost to the scam, together with interest to recognise that L has been deprived of that money. I'll explain why I've reached that finding.

I'm satisfied that Mrs W authorised these three payments on behalf of L, albeit only doing so having been deceived through a scam. So, although she didn't intend the money to go to the scammer, under the Payment Services Regulations 2017, and the terms and conditions of the account, L is presumed liable for the loss in the first instance. But the matter doesn't end there.

As a matter of good industry practice I'd expect Tide to be looking out for unusual or out of character payments that might be indicative of the risk of loss through fraud or scam.

In this case, Tide acknowledges that its transaction monitoring system did not accurately recognise the risk in Mrs W's transactions. It has taken account of our Investigator's comments that the situation bore the hallmarks of a scam. The transactions were significantly higher than any other payments L had made before. They rapidly depleted the available balance, and the actual account name didn't match the account name that Mrs W had entered.

I agree here - Tide should have spotted these signs and contacted Mrs W to ask some appropriate questions. There's nothing to make me think Mrs W would have done other than to answer openly and honestly, thereby bringing the scam to light. Therefore, had Tide done so, I see no reason why it would not have been able to uncover the scam and prevent L's losses.

While Tide now agrees it should have done more, it also thinks Mrs W should share some

responsibility for the loss. In light of this, I've carefully considered whether Mrs W's actions or inactions fell below the standard expected of a reasonable person. Having done so, I'm not persuaded that she should fairly be blamed for falling for the scammer's story. I can understand why she accepted what she was being told. I don't consider Tide has placed appropriate weight on the trust built by the scammer during the course of this scam.

And in particular, I find a spoofed number will often prove a very powerful deception to convince a customer that the call has originated with the genuine company being impersonated. All taken into account, in this specific instance I'm satisfied this factor carried significant weight – adding considerable legitimacy to the false beliefs the scammer was able to engender. At the time Mrs W believed she was speaking to Tide, and I don't think she ought to have realised that she wasn't.

Tide argues that the specific number used by the scammer would only ever be used by it for inbound calls – it would never make an outbound call from that number. But Mrs W did not know that did not know that at the time - and I don't consider she ought reasonably to have known that.

Tide has also pointed out that the wording of the one-time passcode (OTP) text covered exactly the situation Mrs W was in – it would never ask someone to move money. But I don't think this is enough to persuade me that Mrs W's actions at the time were careless or unreasonable.

In particular, I note her testimony that the scammer created a sense of urgency and the need to act quickly to protect her funds. She describes feeling pressured and harassed. The scammer was able to create a false sense of panic. I find this testimony plausible and persuasive, and I think these circumstances are relevant.

Mrs W also has explained that she didn't need to exit the Tide app to input the OTP – it appeared as a notification, and that was enough for her to quickly input the number into her Tide app. That rapidity of the whole process is reflected in the very closely spaced transaction timings provided by Tide.

I accept that in the cold light of day, Mrs W might be expected to react differently. But in that specific moment, and in that false environment the scammer had created, I don't find it unreasonable that Tide's text message didn't have the same impact on her - when set against what she was being told over the phone, by someone she believed to be from Tide's own fraud team.

Similarly in that situation I find it wasn't unreasonable for Mrs W to have been reassured by the scammer's explanation that the name on the destination account would generate a no-match result when Mrs W input her name as the payee, because she was told Tide was trying to avoid alerting those who were hacking into L's account that L's funds were being moved for protection.

In short, in the heat of the moment and in what had developed into a highly pressured situation, I don't think it's unreasonable that Mrs W didn't realise the caller wasn't legitimate.

And overall, I am not persuaded that Mrs W acted unreasonably. I think she has done what a reasonable person would have done in the same situation. As such, I don't think it is fair to conclude that L should share liability with Tide for the loss that resulted.

### **Putting things right**

For the reasons given above, I find that Clearbank Limited (Tide) should:

- Refund the sum of £4994.90, that being L's outstanding loss; and,
- Pay interest on the above amount, calculated at 8% simple per year (less any tax properly deductible\*) from the date of the payments until the date of settlement.

*\* If ClearBank Limited considers it is required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mrs W how much it's taken off. It should also provide a tax deduction certificate if Mrs W asks for one, so the tax can be reclaimed from HM Revenue & Customs where appropriate.*

### **My final decision**

For the reasons given above, I uphold L's complaint about Clearbank Limited.

Clearbank Limited should settle the matter as set out above within 28 days of receiving notification of L's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 11 October 2023.

Stephen Dickie  
**Ombudsman**