

The complaint

F, a limited company, is unhappy with ClearBank Limited trading as Tide ("Tide") as it won't refund the money it lost when it fell victim to an 'authorised push payment' ("APP") safe account scam.

F is represented by its director Ms S - who fell victim to the scam – so for ease I have referred to her throughout this decision.

What happened

The details and facts of this case are well-known to both parties and were clearly set out in detail by our Investigator – so I don't need to repeat them at length here.

In summary, Ms S fell victim to a safe account scam. Ms S received a call from whom she believed was Tide which ultimately resulted in her transferring all of her balance (£7,445.09) to account that she believed was a 'safe account' in her company's name – but was sadly an account controlled by a scammer and the number Ms S had been contacted on was a 'spoofed number'.

Ms S reported the matter to Tide. Broadly summarised, Tide considered it wasn't responsible for the loss as Ms S had authorised the payment. Tide also contacted the beneficiary bank (the bank where Ms S had sent the funds), but no funds remained that could be recovered as the funds had already been moved on.

Unhappy, Ms S referred the matter to our service. One of our Investigators looked into the complaint and upheld it. He considered, while Ms S had 'authorised' the transfer (albeit while being tricked), Tide should have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud or financial harm. The Investigator considered the transfer Ms S made was unusual as it was by far the highest transfer value made under the account, it was made to a new payee, and it also cleared the balance of the account. Our Investigator thought the loss could have been prevented had Tide intervened. They recommended Tide reimburse the full amount lost to the scam, plus 8% simple interest per year from the date the transfer was made. They also recommended Tide pay an additional £100 for the unnecessary inconvenience caused.

Tide disagreed, but ultimately in further correspondence with the Investigator, considered the loss should be shared between the parties. So it offered 50% of the loss plus 8% simple interest per year on that amount. It also agreed to the inconvenience payment of £100. Our Investigator didn't think this was a fair way to resolve the matter but put the offer to Ms S for her consideration. Ms S didn't accept and considered the funds should be reimbursed in full.

As the matter hasn't been resolved, it's 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 uphold this complaint. I'll explain why.

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.

It is the case that Ms S authorised the transfer in dispute and that's accepted by all parties. And under the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Ms S is responsible for them. That remains the case even though Ms S was the unfortunate victim of a scam.

However, 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 payment service providers 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.

Taking the above into consideration, in this case, I need to decide whether Tide acted fairly and reasonably in its dealings with Ms S when she made the transfer or whether it should have done more than it did.

Did Tide act fairly and reasonably in this case?

I note Tide, in response to the Investigator's view, ultimately considered that responsibility should be shared between itself and Ms S.

For completeness, given the above considerations, I agree with our Investigator that the payment was unusual, and some further checks should have been carried out by Tide. I appreciate that Tide operates business bank accounts and I have carefully considered its submissions around this point and what it says about its monitoring systems. Here, I am mindful that Ms S hadn't made a payment of that size in her time banking with Tide. I acknowledge that Ms S had only had the business account for around five months. But the transfer was still out of character when looking at the previous usage and, importantly, it was to a new payee and was clearing the account completely to zero. While I appreciate businesses can make larger payments, this was completely clearing the account.

Tide is well aware of the common features of scams. And it would have known that this can be an indication that a consumer is at risk of financial harm and could be falling victim to a safe account scam – which was the case here. So I consider Tide could and should have carried out some additional checks to satisfy itself that its consumer wasn't at risk. I think Tide ought to have provided a tailored warning about safe account scams. And had it done, I'm persuaded that the scam would have unravelled, and the loss would have been prevented.

Tide suggest that given Ms S was on the phone with the scammers that it wouldn't have been able to establish contact with her. Tide could have put the payment to pending until it received contact from Ms S. I note when Ms S was talking to an adviser after logging the scam with Tide, with Ms S advising she doesn't want to answer the phone and doesn't trust any incoming call, she was advised that she could always use the 'chat function' to ensure she is liaising with the genuine Tide. So I think it is fair to say that there were other avenues open to Tide and it fairly and reasonably could have done more to satisfy itself that its customer wasn't at risk.

Should Ms S bear some responsibility for the loss?

Ms S was the victim of a cruel and sophisticated scam – something I am mindful that Tide itself acknowledges within its final response letter to Ms S. Here, Ms S was called on a spoofed number so Ms S believed she was liaising with Tide. I note Ms S wasn't aware that in scanning a QR code, it gave the scammer access to view her account through the web version of Tide on its internet website – hence why the scammer knew all the details of the account and any recent payments. I can see why a scammer having access to that information would have made it appear as though everything was genuine. And the fraudster cleverly used Ms S's own company name for the account that was set up and that Ms S thought was the 'safe account'. So I can also see why Ms S thought she was securing her funds.

I am satisfied Ms S believed she was liaising with her genuine banking provider at the time and didn't foresee the risk of this sort of harm and was not partly to blame for what happened - especially in the absence of any warnings or intervention by Tide. So, on the particular facts of this individual case, I don't consider it fair to reduce compensation for some of the loss due to any blameworthy acts or omissions by Ms S.

Did Tide do enough to recover Ms S's funds?

While I am upholding this complaint in full – meaning Ms S will be reimbursed fully, for completeness I've also considered whether Tide took reasonable steps to recover Ms S's funds once it was made aware she was the victim of a scam. Tide could have reasonably acted sooner than it did here. Ms S reported the matter on 23 June 2022 and Tide contacted the Receiving Firm the next day. However I am mindful that Faster Payments are often credited into the receiving account almost instantaneously and fraudsters typically withdraw / move funds on also in case they get frozen or withheld if the matter is reported. Tide provided information from the Receiving Firm that showed the funds had unfortunately been moved on / withdrawn almost instantaneously. So even if Tide had acted more quickly than it did it unfortunately wouldn't have made a difference.

Summary

Overall, I consider when Ms S made the transfer Tide could have done more to prevent Ms S from the risk of financial harm. There was enough going on to suggest that Ms S may well have been in the process of being scammed and Tide ought fairly and reasonably to have picked up on this. Had it done so and had Tide contacted Ms S directly and asked some questions to challenge the purpose of the transfer, I'm persuaded it is more likely than not the scam would have come to light, and Ms S wouldn't have lost out on the £7,445.09 she ended up transferring.

Ms S has explained that money she lost had an impact on her business. However I am mindful Ms S was able to borrow around £7,000 from a friend – and unfortunately still wasn't able to continue with her business. So despite the fact I think the loss could have been prevented I don't think I can fairly say Tide's actions were the sole reason Ms S's company suffered.

I don't consider any further additional compensation is due other than the £100 our Investigator awarded which Tide have already agreed to. I think this amount fairly takes into consideration the additional inconvenience Ms S's company was put to when arguably that loss could have been prevented.

Putting things right

For the reasons given above, I uphold, Ms S's complaint against ClearBank Limited.

I now direct ClearBank Limited to:

- Refund £7,445.09;
- Pay additional interest on that amount at 8% simple interest per year from the date Ms S made the transfer until the date of settlement.*
- Pay £100 for the inconvenience caused

**If ClearBank Limited deducts tax from this part of the award it should provide a tax deduction certificate to Ms S so she can reclaim the amount from HMRC if eligible to do so.*

My final decision

For the reasons given above, my final decision is that I uphold this complaint.

I direct ClearBank Limited to pay compensation, as set out above, within 28 days of receiving notification of Ms S's acceptance (on behalf of company F), of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S, on behalf of F, to accept or reject my decision before 13 October 2023.

Matthew Horner

Ombudsman