

The complaint

Mr P, director of PD (a limited company) is unhappy ClearBank Limited (trading as Tide) won't reimburse PD for the money it lost when Mr P fell victim to a scam.

What happened

Mr P fell victim to a safe account scam. He received a text message, from a number that Tide had previously contacted him on, saying that someone was trying to make a payment from his account and asking him to call. Mr P says he was told that PD's Tide account was at risk and that he needed to move money to a safe account to protect it. Unfortunately, and unknown to him at the time, Mr P was actually speaking with fraudsters.

Believing that he was genuinely dealing with Tide, Mr P ended up making a payment for over £2,900 from PD's account to this 'safe account'.

Mr P realised he had been the victim of a scam when he didn't get any further details of the account the funds had supposedly been moved to, and reported the matter to Tide to see if it could recover the funds. Tide logged the fraud and contacted the business the funds had been sent to, to see if any funds remained that could be recovered. Ultimately though, Tide told Mr P that it wouldn't be reimbursing PD for the payments made from its account, and that it had been unable to recover any funds.

Unhappy, Mr P referred the matter to our service. One of our Investigators looked into the complaint. Overall, they considered that while Mr P had authorised the transfer (albeit as a result of a scam) Tide should have done more to intervene given that the payment was unusual and had hallmarks of a scam payment. Our Investigator also considered that Mr P – on behalf of PD – wasn't partly to blame and shouldn't bear any responsibility for the loss.

Our Investigator recommended Tide refund the losses to PD.

Mr P, on behalf of PD, accepted the Investigators findings, but Tide disagreed. It did not consider that the payment was unusual, and noted that it had provided warnings – that the payee did not match what had been input by Mr P, and via a message asking for a one-time passcode – which Mr P had ignored.

As no agreement could be reached, the case has now 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've reached the same conclusions as our Investigator, and for the same reasons.

It's not disputed that Mr P authorised the payment that is in dispute here. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that

means PD is responsible for them. That remains the case even though Mr P was the unfortunate victim of a scam.

Because of this, PD is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether Tide acted fairly and reasonably in its dealings with PD, or whether it should have done more than it did.

PD's account had been opened in November 2022, just over two months before the disputed payment. I appreciate this is a relatively short time, but during that period the account had been used regular, so a picture of what was normal for the account had started to build up. In general, the payments out of the account were relatively low, with the highest payment being for just over £1,000. So I think that the payment made on 10 January 2023 as part of this scam, for over £2,900, was relatively unusual given that it was more than double any previous payment out of the account.

However, I agree that, on its own, this may not have been enough to say Tide should have intervened. There are though several other features of the payment which mean that I think Tide should have stepped in to ensure nothing untoward was happening. Specifically, as well as being a high payment in the context of the account, the payment was to a new payee, was being made to an account where the payee details input by Mr P did not match the name on the recipient account, and almost entirely cleared the balance of the account. I think this activity, as a whole and bearing in mind common features of scams which I would expect Tide to be aware of, was unusual enough that Tide ought to have been alerted to the possibility of financial harm and intervened.

I acknowledge that this is a business account, which are usually operated differently to personal accounts in that they deal with higher payments and new payees more often. However, while keeping this in mind, with this particular business account, I don't think the payment in question was the norm.

Considering the nature of the scam, I think a conversation about what the payment was for would have quickly revealed the scam and prevented the payment being made. Mr P doesn't appear to have been given a cover story to use by the scammer, and he already though he was talking to Tide, so if he'd been unable to progress with making a payment until he'd been forced to speak to the real Tide, then I think he'd have been open and honest about what was happening. With this in mind, I think it would be reasonable for Tide to refund the payment that is in dispute here.

I've thought about whether PD should bear some responsibility for its loss by way of contributory negligence, but I don't think it should. Mr P fell victim to a sophisticated scam, and was contacted on what appeared to be Tide's genuine number, as the messages he received appeared in the same thread as messages known to be from the real Tide. In the circumstances of the scam – including the real fear that he might lose a significant amount of money – I can understand why the fraud went undetected by Mr P.

With the benefit of hindsight, there may have been some 'red flags' (for example the mismatch in the confirmation of payee and the message sent with the one-time passcode) that Mr P could've picked up on, particularly if he'd had more time to think. But the scam took place over a short period of time and in the heat of the moment, in a pressured situation.

This is of course a deliberate tactic by the fraudsters to create fear – in the hope it would disrupt Mr P's thinking and make him more compliant. On balance, I'm satisfied that in the circumstances Mr P's actions were not unreasonable.

I have also considered if Tide did enough to try to recover PD's money once Mr P had told it of the scam, but I'm satisfied that the funds had already been moved on by the scammers by the time Mr P reported the fraud. So I don't consider that Tide could have done anything more.

Putting things right

To resolve this complaint Tide should:

- Refund the payment – totaling £2,903.70
- Pay 8% interest on this amount from 10 January 2023 to the date of settlement.

My final decision

I uphold this complaint. ClearBank Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask PD to accept or reject my decision before 7 December 2023.

Sophie Mitchell
Ombudsman