

The complaint

Miss T, a sole trader, is unhappy that ClearBank Limited didn't do more to protect her money when she was deceived into making payments to a scammer.

What happened

Miss T received a phone call from someone claiming to be from Tide – a trading name of ClearBank Limited – who said that her Tide account had been compromised by unknown fraudsters who were attempting to withdraw large sums of money from it. Miss T asked how she could be sure the caller was from Tide, to which the caller responded that Miss T could check the number she was being called from and would see it was the same as the number on the back of her Tide card – which it was.

The caller then explained to Miss T that she needed to set up a safe account and move money from her Tide account to this new safe account. The caller sent Miss T a QR code which she had to approve to verify her identity – but which in actual fact the approval of which gave the scammer access to Miss T's Tide account.

Miss T was then asked to approve a transfer of £15,000 to the 'safe' account, which appeared to be in her company name, and which she did. But the scammer explained that the transfer hadn't gone through and asked Miss T to repeat it, meaning that Miss T approved two transfers of £15,000, totalling £30,000.

Miss T later checked her Tide account and saw the payments had been made to an account which wasn't in her company name as she'd believed. Miss T contacted Tide, at which point the scam was discovered. Tide tried to recover the money for Miss T, but the scammer had already removed the funds from the recipient account, meaning no money was left to be recovered. Miss T wasn't happy about what had happened, so she raised a complaint.

Tide responded and explained that they didn't feel they'd acted unfairly by processing the two payments she'd authorised to the scammers as they had. But they did accept that they could have acted more quickly to try to recover the money from the scammer than they did, and that if they had, it was likely that £7,459 of Miss T's money which hadn't been moved from the scammer's account at that time could have been recovered.

Tide apologised to Miss T for this and paid the £7,459 to her, along 8% interest on that amount. And Tide made a further payment of £150 to Miss T as compensation for the upset and inconvenience she'd incurred because they hadn't received that portion of her money as they should have done. Miss T wasn't satisfied with Tide's response, so she referred her complaint to this service.

One of our investigators looked at this complaint. They felt the first payment of £15,000 was one which should reasonably have been considered potentially suspicious by Tide such that they shouldn't have allowed the payment to complete without first contacting Miss T. And our investigator felt that if Tide had contacted Miss T before processing the payment, it was likely the scam would have been uncovered such that Miss T wouldn't have lost her money.

Our investigator therefore recommended that Tide should reimburse Miss T the remaining £22,541 along with 8% interest on that amount. And our investigator also said that Tide should pay further compensation of £500 to Miss T for the distress and inconvenience their failure to block the attempted payments had caused. Tide didn't agree with the view of this complaint put forwards by our investigator, so the matter was escalated to an ombudsman for a final 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'd like to begin by confirming that this service isn't a regulatory body or a Court of Law and doesn't operate as such. Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the factors and circumstances of a complaint into consideration.

It isn't in dispute that Miss T was the victim of a sophisticated scam here of a type commonly known as a 'safe account' scam. In this type of scam, the scammer deceives the victim into believing that they are calling from their bank. The scammer then convinces the victim that a potentially dangerous situation has arisen whereby the victim might lose the money in their account to fraudsters attempting to withdraw it, if they don't act quickly to move the money to a 'safe' account under the instruct of the scammer.

In broad terms, the starting position in law is that a bank such as Tide is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, in instances where the customer made payments because of the actions of a scammer, it may sometimes be fair and reasonable for the bank to reimburse the customer, even though the customer authorised the payments.

For example, in this instance, this could be if Tide should fairly have recognised that the payments Miss T was deceived into making were potentially scam payments such that they reasonably shouldn't have processed the payments before contacting Miss T and questioning her about them.

I've therefore considered how Miss T managed and maintained her Tide account before the scam took place. And having done so, I feel that the first payment of £15,000 that Miss T made on the instruction of the scammer should have been flagged as suspicious by Tide, such that it, and the second payment of £15,000, shouldn't have been processed by them before contacting Miss T.

I take this position because scams of this type have certain characteristics which include that the victim is coerced into making larger than usual payments to a brand-new payee, which they've never made or received payments from previously. And this is exactly what happened in this instance.

Indeed, the payment amount of £15,000 was by some distance the largest ever outbound payment made on the account – discounting a larger payment that was made by Tide themselves as part of an account migration process for Miss T. And Miss T made two consecutive payments of £15,000 to a brand-new payee. And given the clear similarity of these payments with how scams of this type are typically perpetuated, I feel that the

specifics of this account activity should have been considered suspicious by Tide, such that they should have attempted to intervene in response to the first of these payments.

Tide don't agree with my position here and contend that it isn't reasonable to expect high value payments on a business account being made to a new payee to be blocked pending customer contact. And Tide say that this is because such payments are relatively normal business activity and to block all such payments would result in many legitimate business payments being blocked, to the detriment of their business account holders.

But I continue to feel that these payments should have been considered as suspicious by Tide, for the reasons explained above. And I don't feel that a business account holder should reasonably receive a reduced form of potential scam protection, as Tide appear to imply here, simply because they're a business account holder rather than a personal account holder. And I also don't accept that the particulars of these payments – each being made to a brand-new payee and each being of a payment amount 50% larger than any previous valid outgoing payment on the account – happens with the regularity that Tide seem to suggest.

I acknowledge that Miss T had made large payments out of her account in the past. Most notably, three payments of £10,000 made on the same day to an account in her name. Prior to the £15,000 payments under consideration, these appear to have been the largest valid outbound payments on the account. The question of whether these £10,000 payments should have been considered suspicious by Tide is outside the remit of this complaint. But given that this flurry of payments occurred on one day, it seems to have been a one-off activity and I don't feel it establishes a pattern of Miss T making large payments regularly, such that the larger £15,000 payments shouldn't have been considered suspicious.

Tide have also said that even if they had blocked the payment and tried to intervene, Miss T was already on a call with the scammer, who she believed was Tide, such that they wouldn't have been able to speak with her. Tide have also explained that if they did intervene, they would only have blocked the payment, not the account. And Tide feels the scammer could have explained to Miss T that the payment had been picked up by Tide's fraud prevention system and could have instructed Miss T to circumnavigate this by instructing the transfer as several smaller amounts, which wouldn't have been considered suspicious.

But I don't feel that any reasonable bank should allow a payment of any amount to be made to a particular payee, if that bank already has a block on a payment to that payee it feels is suspicious and which it hasn't yet been able to speak with its customer about – as was the case in this instance. Additionally, Tide wouldn't have been restricted to attempting to contact Miss T by telephone, but could have sent emails or text messages which Miss T may have been able to receive while on the call, or secure messages in their app.

Furthermore, I feel that if Tide had contacted Miss T in any of the ways described above, and had blocked payments to the new payee until it had done so, it would have been the case that Miss T would have recognised that the scammer wasn't in fact from Tide and that therefore the attempted scam would have been uncovered so that Miss T wouldn't have lost the money that she did. And ultimately, this means that I don't feel that Tide did do enough to protect Miss T's money in this instance.

Finally, I've considered whether Miss T should reasonably have acted differently than she did when subject to the scam. Notably, Miss T did question the caller at first, but the scammer overcame Miss T's concerns by referring her to the phone number they were calling from, which was a Tide number. And, having created a sense of trust with Miss T, the scammer then created a sense of urgency and panic that Miss T might lose the balance of her account if she didn't act as instructed. And in this scenario, I don't feel it's reasonable to

expect Miss T, having been deceived into believing the caller was from Tide, to have recognised that she was being scammed and to have reacted to it in a different way.

Tide don't agree with my position here and feel Miss T should have asked why, for instance, a Tide employee speaking with her on the phone wanted to verify her identity via a sent QR code rather than asking her ID verification questions verbally, such as her date of birth. I can appreciate Tide's point here, to a degree. And if Miss T had been calm and unflustered then I agree it might have been reasonable to have expected her to be more insightful about what might have been happening.

But as explained above, the intention of scams of this type is to create a situation where the victim trusts the scammer and isn't calm and unflustered but is panicked and must act quickly. And I don't feel that Miss T being asked to verify her identity via a QR code is much different to similar methods of ID verification – such as one-time passcodes – that are increasingly used by UK banks including, as Miss T had confirmed, the bank with which she holds her personal current account. Additionally, the verification email which contained the QR code sent by Tide, which allowed the scammer access to Miss T's account, simply states 'verification process', and doesn't make it clear what specifically the verification is for.

All of which means that I'll be upholding this complaint in Miss T's favour and instructing Tide to reimburse the £22,541 to her that remains outstanding, along with 8% interest. This is because I don't feel Miss T acted negligently while being scammed, because I don't feel that Tide intervened before processing the payments as they reasonably should have, and because I feel that had Tide intervened, it's highly likely the scam would have been uncovered and that Miss T wouldn't have lost her money.

Finally, I'll also be instructing Tide to make a payment of £500 to Miss T – in addition to the £150 they've already paid – as compensation for distress and inconvenience she's experienced surrounding this matter.

In arriving at this amount, I've considered the significant upset, worry, and trouble Miss T incurred which I feel is self-evident, given the nature of this complaint and the amount of money involved, and which Miss T has described herself to this service, and which I feel was exacerbated due to the impact of these events to Miss T's business. And I've also considered the general framework which this service uses when assessing compensation amounts for distress and inconvenience – details of which are on this service's website.

I realise this won't be the outcome Tide were wanting, but I hope they'll understand, given what I've explained, why I've made the final decision that I have.

Putting things right

Tide must reimburse Miss T the remaining balance of £22,541 that she lost, plus 8% interest calculated from the date of loss to the date of payment.

Tide must also make a further payment of £500 to Miss T.

My final decision

My final decision is that I uphold this complaint against ClearBank Limited on the basis explained above

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 14 September 2023.

Paul Cooper
Ombudsman