

The complaint

Mr K, director of IL (a limited company) is unhappy Tide Platform Ltd won't reimburse IL for the money it lost when Mr K fell victim to a scam.

What happened

IL is represented in this complaint by a claims management company, but for simplicity I will refer to IL and Mr K throughout this decision, even when referencing what those representatives have said on IL's behalf.

Mr K fell victim to a safe account scam. After Mr K's details were compromised via a phishing text he was contacted by individuals claiming to be from Tide. Mr K says he was told that IL's Tide account was at risk – as were other accounts Mr K held elsewhere – and that he needed to move money to a safe account to protect it. Unfortunately, and unknown to him at the time, Mr K was actually speaking with fraudsters.

Believing that he was genuinely dealing with Tide, Mr K ended up making two payments, for £9,000 and for £7,200 out of IL's Tide account.

Mr K realised he had been the victim of a scam when he could not see the safe account the funds had supposedly been moved to, and immediately reported the matter to Tide to see if it could help stop the payments or 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 K that it wouldn't be reimbursing IL for the payments made from its account.

Unhappy, Mr K referred the matter to our service. One of our Investigators looked into the complaint. Overall, they considered that while Mr K had authorised the transfers (albeit as a result of a scam) Tide should have done more to intervene given that the payments were unusual. They felt Tide should have contacted Mr K directly, rather than relying on any written warnings it had provided. It was our Investigator's view that, had Tide done so, it was more likely than not the scam would've unravelled, and the loss would've been prevented. Our Investigator also considered that Mr K – on behalf of IL – wasn't partly to blame and shouldn't bear any responsibility for the loss.

Our Investigator recommended Tide refund the losses to IL.

Mr K, on behalf of IL, accepted the Investigators findings, but Tide disagreed. It did not consider that the payments were unusual, and noted that it had provided warnings – that the payee did not match what had been input by Mr K, and via a message asking for a one-time passcode – which Mr K had ignored. It also said that, given Mr K thought he was already speaking with Tide, it likely wouldn't have been able to make direct contact with him anyway.

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 K authorised the payments that are in dispute here. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means IL is responsible for them. That remains the case even though Mr K was the unfortunate victim of a scam.

Because of this, IL 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 IL, or whether it should have done more than it did.

Tide has said that, as it provides business banking facilities, its fraud detection systems should have greater tolerance for out of character transactions and larger payments may happen from time to time. I've taken this into account when reviewing the transactions in dispute here.

There was regular activity on IL's account for the months in the run up to the scam, most of this activity was relatively small payments, and payments over £2,000 were rare. On 24 August 2022 the account received a credit of £9,000 from a bank account belonging to Mr K before it was transferred out shortly after to the scammers.

This is a not insignificant amount of money, although I appreciate IL had previously made a payment of £9,000, that was seven months prior and was itself a relative anomaly on the account. I don't think this on its own would be enough to say Tide should have intervened, but the payment was also to a new payee. I do not think that this activity, taken as a whole, was usual for IL's account. I think the activity 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 first payment – and then any further payment – from being made. Mr K doesn't appear to have been given a cover story to use by the scammer, and he already thought 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 payments that are in dispute here.

I've thought about whether IL should bear some responsibility for its loss by way of contributory negligence, but I don't think it should. IL fell victim to a sophisticated scam.

From what Mr K's said, the scammer knew personal details about him and they had knowledge of IL's account movements. And the number Mr K was called from did appear to be Tide's genuine number. 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 K.

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 K 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 K's thinking and make him more compliant. On balance, I'm satisfied that in the circumstances Mr K's actions were not unreasonable.

I have also considered if Tide did enough to try to recover IL's money once Mr K had told it of the scam, and I'm satisfied Tide did act quickly. It contacted the recipient bank within around an hour of being told of the scam, but unfortunately Tide was still unable to recover any funds.

Putting things right

To resolve this complaint Tide should:

- Refund the payments – totaling £16,200
- I am not recommending that interest be paid on this amount as the funds in dispute here initially came from Mr K's personal account, so IL has not been deprived of the funds. And this complaint is in IL's name, so I cannot consider Mr K's personal losses as part of this decision.

My final decision

I uphold this complaint. Tide Platform Ltd 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 IL to accept or reject my decision before 2 November 2023.

Sophie Mitchell
Ombudsman