

## **The complaint**

A company, which I'll refer to as S, complains that ClearBank Limited (Tide) won't refund the money that was lost through an Authorised Push Payment ("APP") scam.

Mrs L has brought this complaint on behalf of S, so for ease of reading I'll refer to Mrs L throughout.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat it all in detail here.

In brief summary, Mrs L has explained that in February 2023 she received a call from somebody saying they were Tide and explaining that her account was at risk. The call came from a 'No Caller ID' and Mrs L has said she was initially suspicious and asked to call Tide back. But instead the caller sent Mrs L a text message, that appeared in a genuine Tide message chain, confirming that it was Tide that was calling.

The caller persuaded Mrs L that she needed to make a payment from S' account with Tide in order to protect the money and keep it safe. Believing everything to be genuine, on 2 February 2023, Mrs L went ahead and made a payment for £13,795 to the account details provided by the caller.

But unknown to Mrs L at the time, she was speaking to fraudsters and had sent the money to accounts the fraudsters controlled.

Realising she'd been the victim of a scam; Mrs L raised the matter with Tide. It looked into S' complaint but didn't uphold it. In summary it said Mrs L would have been aware of the fact that she was authorising a payment and Tide was confident it had done what was expected of it.

Mrs L didn't accept Tide's response and so she brought her complaint to this service. One of our Investigator's looked into it and thought the complaint should be upheld in part. In summary, this was because she thought Tide should have detected this was unusual activity, given the payment was significantly larger, than the payments in the previous twelve months and to a new payee, so she thought Tide ought to have intervened and contacted Mrs L. Had it done so, it was our Investigator's view that the scam would have quickly unravelled and could have been prevented.

But our Investigator also didn't think Mrs L had taken enough steps to question what she was being asked to do. In view of this she considered that liability should be shared and Tide should refund S 50% of the money lost, along with interest.

Mrs L responded, she agreed with our Investigator's view and thought this was a fair outcome, given all of the circumstances.

Tide also responded, but disagreed with our Investigator's view. In summary it pointed to a large transaction in February 2022 (which went to Mrs L's personal account), which it said

demonstrated one-off larger payments could be expected on the account. It also didn't consider a new payee being set up should have given it cause for concern, as since opening her account (in early 2021) Mrs L had added nearly 50 new payees. In light of this it didn't think an intervention was warranted.

As agreement couldn't be reached the complaint was passed to me for a decision.

Ahead of issuing this decision, I reached out to Tide with my initial thoughts and asked it if it would like to reconsider its position, as I was minded to agree with our Investigators view. An extract of these initial thoughts, that I shared with Tide is below;

*I'm very mindful that Tide has a difficult balance to strike, in how it configures its systems to protect its customers from fraud, against the requirement to not unduly hold up genuine payments. But in the individual circumstances of this case, there are several factors, not just that this was to a new payee, that ought to have put Tide on notice that its customer may have been at risk of financial harm. I'll explain further;*

- *When looking through the statements for the previous twelve months, I can see that the disputed payment was higher than any other payment that had been made from the account.*
- *There are transfers that the consumer has made to themselves and to HMRC for reasonably high amounts – but these are to existing payees.*
- *When looking at the vast majority of the payments made for amounts in excess of £1,000 – they are, in the main, to regular and existing payees.*
- *It's also important to note here that the payment that was made to the fraudsters, cleared almost the entirety of the account balance. This, in and of itself, can be indicative of fraud – especially when the payment is going to a new payee. In the circumstances of this case, it is also worth noting that it is not typical for this account to run its balance down like that – rather the account holder tends to maintain a healthy balance.*
- *I also don't think enough consideration has been given to the fact that here, just a couple of months before, the account had been the subject of a separate fraud attack – indeed the fraud claim for that hadn't been resolved at the point this 'safe account' scam happened. As the professionals in these matters, Tide ought to be aware that victims of fraud can often be targeted multiple times by fraudsters and should have been alert to that.*
- *I can't see that Tide provided any fraud 'education' to its customer following the earlier fraud – to warn the customer to be on the lookout for future attempted fraud.*

*All things considered and on balance, there were multiple red flags that Tide have missed on this case and it is my intention to say that it ought to have intervened. And if it had of done, it would have made a difference and prevented it's customer losing this money. It is therefore, at least in part, liable for the loss.*

*It is my intention to ask Tide to refund 50% of the loss, being £6,897.50, and to pay 8% interest on this amount from the date of payment to the date of settlement.*

Tide responded to my initial thoughts, but its position remained unchanged. In summary, it

didn't think the fraud a few months prior to this scam was applicable, as that related to a compromised card and so it didn't see how this was relevant to a safe account scam. It added that it thought the payments to HMRC and Mrs L's personal account should be factored into the account spending. Alongside this it said there was a OTP warning presented at the time the payment was made.

### **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.

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 be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

Both parties have accepted that the payment was authorised by Mrs L, so the starting position in law is that Tide was obliged to follow Mrs L's instruction and process the payment. So, S is not automatically entitled to a refund.

But that is not the end of the matter, 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.

So, I've thought about whether Tide did enough to try to keep S' account safe and for reasons I've already explained to Tide in my initial thoughts, I don't think it did. I won't repeat these all again in detail here. But I will comment on the additional points that Tide has raised.

I don't agree with Tide's assertion that it doesn't think its applicable to raise the argument about the previous fraud that Mrs L experienced, as that was a card transaction and this was a 'safe-account' scam. As professionals in these matters, I would reasonably expect Tide to be alert to the fact that it is not uncommon for people who have been victims of scams, to either be targeted again or to fall victim to further fraud. Whether that previous fraud was linked to this one or not, I would still fairly and reasonably expect Tide to be alert to the fact, if one of its customers had recently fallen victim to a scam, as was the case here.

I say that especially in the circumstances of this case, where this was a high value transaction, to a new payee, that cleared nearly the entirety of the account balance – all of which are not in keeping with how this account is typically run. It also matters that the previous higher-value payments that have been made on this account have gone to recognised payees.

All things considered, while I recognise that Tide has a difficult balance to strike as to when to intervene on payments, against holding up legitimate payments. There are several factors in play here which, when taken collectively, ought to have given Tide cause for concern, to the point where it reasonably ought not to have allowed the payment to be progressed without carrying out some additional checks or intervening and speaking to Mrs L to satisfy itself Mrs L wasn't at risk of financial harm.

Mrs L wasn't being coached by the fraudster as to what to say which can sometimes, but not always, be the case. So I think Mrs L would have spoken freely about the reason for the payment and explained that she was moving her money to keep it safe, with that I think the scam would quickly have come to light, the payment could have been prevented and S wouldn't have lost this money. With this in mind, in missing this opportunity, Tide is, at least in part, liable for the loss.

I'm mindful that Mrs L, on behalf of S, has accepted our Investigator's position that liability should be shared – so I don't need to comment on that in detail. But for completeness, I agree with our Investigator. I say that as I can see from the evidence that has been submitted that Mrs L had her suspicions when she received the call from a 'no caller ID' number and asked to call Tide back, but instead she received a text message from Tide. I recognise here that in doing so Mrs L hasn't proceeded with a complete disregard for risk. But I can see that just below the message Mrs L received it is also noted that '*Tide will NEVER call you asking you to move funds.*'. So when considering this in the round, I don't think this message, in and of itself, should have satisfied Mrs L that things were all as they seem. On balance, I think it is fair and reasonable, in the individual circumstances of this case, that liability should be shared.

Finally, I've thought about whether Tide did what it should have done when S reported the fraud. I've seen evidence from the beneficiary bank (the bank to which the money was sent), to show that the funds were removed within a few minutes of Mrs L making the payment. So I don't think Tide had any opportunity to recover the money that was sadly lost.

### **Putting things right**

For the reasons explained above, my decision is that I uphold this complaint in part and now order ClearBank Limited to:

- Refund 50% of the money S lost, being £6,897.50 (50% of £13,795).
- Pay 8% interest on this amount, from the date of the transactions to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint against ClearBank Limited in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask S and S to accept or reject my decision before 18 April 2024.

Stephen Wise  
**Ombudsman**