

## **The complaint**

W, a limited company, is unhappy with ClearBank Limited trading as Tide ("Tide") as it won't refund the money it lost as a result of a third-party scam.

W is represented its director - Mr E. It was Mr E who fell victim to the scam – so for ease I have referred to him throughout this decision.

## **What happened**

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

On 16 August 2022, Mr E was contacted by someone who claimed to be from Tide's fraud department. They called from a number connected with Tide. They told him that his accounts were at risk, and he needed to move all his money into two 'safe' accounts – one of which was in Mr E's name. Mr E was sent a QR code which he scanned. Two transfers were made from Mr E's Tide account of £50,000 and £45,915.02 totalling £95,915.02. But soon after Mr E realised he'd been the victim of a scam and tried to call Tide straightaway.

Tide did not uphold the complaint. It said it isn't subscribed to the voluntary Contingent Reimbursement Model (CRM) Code. However, it did accept there were some delays in it reporting the fraud to the beneficiary bank(s). On this basis, it offered to refund £33,349.97 from the second transaction which it felt could have been recovered if it had acted sooner. It was also able to recover £4,600.02. In addition, it offered £150 for the delays and communication from its end.

Our investigator upheld the complaint. She felt the account activity was suspicious and unusual. On this basis, she considered Tide should have contacted Mr E for more information and, if it had, the scam would have been unveiled. She also felt that there was no contributory negligence.

Tide accepted that it should have intervened, but it felt there were instances where Mr E should have been concerned about the actions he was taking – so liability should be split equally. It offered to pay £28,982.52 – representing 50% of the remaining lost funds. Our investigator's opinion remained the same and Mr E did not accept Tide's offer, so the complaint has 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.

### *Authorisation*

The question of authorisation is a key one in a case of this kind. Because, although it's not in dispute that Mr E didn't set out to be scammed, under the Payment Services Regulations 2017 (PSRs), and general banking terms and conditions, he is presumed liable in the first

instance if he authorised the transactions.

Mr E says he didn't authorise the transactions. Whether Mr E made the transactions himself or was tricked into allowing them to be made (for example by scanning the QR code to enable what he thought was his bank to authorise them) means they are authorised, even though Mr E may have been tricked into doing so and was the victim of a scam. I appreciate he didn't intend the money to go to the scammers. But, under the Payment Services Regulations 2017, and the terms and conditions of his account, he is presumed liable for the loss in the first instance. But the matter doesn't end there.

Although Tide is not a signatory to the CRM Code, as a digital business banking provider, 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 banks 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.

I am not going to go into detail here – as Tide has accepted that it ought to have intervened – but for completeness I do agree. These two payments emptied out the account entirely in a short span of time. They were by far the largest transactions Mr E had made. I think Tide ought to have been concerned about the activity and done more than it did.

I think if it had done so, it was more likely to break the spell and the scam likely unveiled. So, I think Tide should refund both transactions.

*Should W share in the responsibility for its losses?*

I've thought about whether W should bear some responsibility for its loss by way of contributory negligence, but I don't think it should. W fell victim to a sophisticated scam. 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 fraudster/s to create fear – in the hope it would disrupt Mr E's thinking and make him more compliant.

I don't agree with Tide that W should've possessed any special knowledge about safe account scams. From what I've seen, W is a relatively small business. I'm not persuaded that W can reasonably be expected to have had an understanding of this type of fraud or how to protect itself against it. Tide was the professional here and is more familiar with this type of scam.

From what Mr E's said, the scammer knew personal details about him and they had knowledge of W's account balance and genuine transactions that had occurred. The number

he was called from was the same as the genuine number. Therefore, this gave Mr E further reassurance he was speaking with his bank. Overall, he was convinced that he was talking to Tide's fraud department and taking action to protect the funds in all his accounts. I can understand why the fraud initially went undetected by Mr E.

It seems to me by the time Tide sent the one-time passcode with the warning that Tide would never ask him to move funds – Mr E realised and says he did not enter the code himself and tried to call Tide. But by then of course – he had already given the scammers authority and (as Tide acknowledged) it would have been the scammer's who entered the one-time passcode at this point.

I do accept Mr E being called by a spoofed number is something that isn't Tide's fault. This is not an argument being used against Tide. But the starting position is W should be fully refunded. I would only make a deduction if I thought Mr E, on behalf of W, had acted unreasonably in some way. And I can't say he has here.

On balance, in the circumstances of the scam – including the real fear that he might lose all W's money; I don't think Mr E's actions were unreasonable.

### **Putting things right**

In order to put things right for W, ClearBank Limited trading as Tide should refund W in full less anything already paid or recovered (I understand this amounts to a refund of £57,965.03). Because W has been deprived of this money, I consider it fairest that Tide adds 8% simple interest to the refund above from the date of the transactions to the date of settlement.

If Tide is legally required to deduct tax from the interest it should send W a tax deduction certificate so W can claim it back from HMRC if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and ClearBank Limited trading as Tide should put things right for W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 4 January 2024.

Kathryn Milne  
**Ombudsman**