

The complaint

R is a small business. It holds a business account with ClearBank Limited, which trades as Tide.

In November 2022, fraudsters contacted R. They pretended to be from Tide itself and convinced R that its account with them had been “*compromised*” and money in the account was at risk.

The fraudsters had created a new account which they told R was “*secure*”. They persuaded R to transfer over £16,000 into this account. In reality, the account was anything but secure. It was a fraudulent account which the fraudsters controlled. The fraudsters stole all the money R paid into it.

R thinks Tide should have spotted the fraud and stopped the fraudsters stealing its money. Tide didn’t, so R wants it to refund all the stolen money and add interest.

What happened

The fraud took place on 1 November 2022. The fraudsters contacted R by phone. The number they called from appeared to belong to Tide. And they also had information about R which allowed them to generate a very convincing and compelling background story.

The fraudsters persuaded R to make four payments into the fraudulent account using Tide’s online service for fast payments. I have provided outline details of the four payments in the table below. For simplicity, I have rounded the value of each payment to the nearest pound.

Payment number	Amount	Time payment sent	Time payment reached the fraudulent account	Time fraudsters move payment away
1	£4,988	17.03	17.30	17.32
2	£6,433	17.18	17.45	Between 17.47 and 18.16
3	£4,197	17.24	17.45	Between 17.47 and 18.16
4	£443	17.35	18.10	18.16

The total amount was £16,061. After payment 4, there was no money left in R’s Tide account. We received information about when the money reached the fraudsters’ account and when the fraudsters moved it, from the bank the fraudsters were using, and I have no reason to doubt its accuracy.

I previously sent R and Tide a provisional decision on this complaint. In that provisional decision, I said that subject to anything either party sent me which changed my mind, I intended to tell Tide to refund half of payment 2 and all of payments 3 and 4 to R, and to add appropriate interest.

The time I allowed for comments has now passed. Tide has accepted my provisional decision, but R thinks that some of the information Tide sent us was incorrect. It still believes

that Tide should refund all of the money the fraudsters stole.

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 response to my provisional decision, R made one major point. To set this in context, I will first provide an extract of my provisional decision which covers the provisional findings I made at that time, and then discuss the point R has raised.

Extract from my provisional decision

Fraud is a significant concern in the finance industry and occurs in several different ways. The type of fraud which took place in this case is known as Authorised Push Payment (APP) fraud. In these cases, fraudsters contact potential victims and persuade them to transfer money to an account the fraudsters control. They use sophisticated and convincing stories, such as the “*secure account scam*” used in this case, to con their victims into parting with their money.

There is no doubt that R followed Tide's normal online banking procedures when it made the four payments to the fraudulent account. I fully accept that it only did so because of the lies the fraudsters had told, but in effect, it instructed Tide to make the four payments.

While banks are normally expected to act on their customers' instructions, they also have a role to play in trying to stop fraud. At the time of this fraud, I would have expected Tide to be looking out for unusual payments, or unusual patterns of payments. And if it saw anything suspicious, I would have expected it to check with the customer concerned and confirm (or otherwise) that the customer wanted to go ahead.

I do not think there was anything particularly unusual about payments 1 and 2. Although they went to a new account, the amounts were not atypical for business-to-business payments. I don't think the payments alone gave Tide sufficient reasons to intervene.

However, both R and Tide have sent us transcripts of some text messages which they sent to each other during the time in which these payments took place, which I also consider to be important.

Tide has told us that it sent R the following message:

“Tide will NEVER call you asking you to move funds. If you did not initiate this request or received such a call, please contact us via the Tide App”.

I do not know the exact time of this message, but I have no reason to doubt that Tide sent it and I understand it did so before R finally authorised payment 1, and that R didn't contact Tide before doing so.

The message described the fraud that was being perpetrated on R pretty closely and if R had acted on it, payment 1 may have been stopped. So, it wouldn't be reasonable to hold Tide responsible for payment 1.

However, R did reply to Tide's message, using the Tide App, before it authorised payment 2. Its response seems to have been in four parts. Tide has sent us the details of these parts and the times it received them.

- Tide received part one at 17.13, and it said: *“Tide are asking me to transfer thousands of pounds”*.
- Tide received part two at 17.27, and it said: *“They have been confirming via text messages”*.
- Tide received part three at 17.28, and it said: *“This feels fraudulent to me”*.
- Tide received part four at 17.39 and it said *“Can you confirm if it’s fraud as all.... messages are coming through via the Tide text number.”*

Clearly, this message being split into four parts did not help with clarity, but it seems to me that part one alone told Tide exactly what was happening in the fraud. Furthermore, by sending it, R had taken precisely the action which Tide had suggested before it authorised payment 2.

We have received slightly contradictory information about how long it took Tide to respond to R’s message. R has told us that it took at least 40 minutes. And it has added that apart from the Tide App, there was no other (possibly quicker) way for it to contact Tide. In some correspondence Tide has said that it didn’t respond until 18.32 and acknowledged this was a delay. But in other correspondence it has told us that *“the created ticket was routed to (the) compromised card disputes team which usually responds slower than (its) App Fraud team, so it’s “not confident” in saying there was a delay.*

Despite the uncertainty about how long Tide took to respond, it seems to me that R replied to Tide’s message by taking the only action it suggested, through the only channel it made available, and that Tide didn’t respond in a timely manner. Had it done so, I think it may have been able to stop payment 2. It follows that I think Tide should take some responsibility for R’s loss from this payment.

However, it also seems to me that Tide’s message should have put R on notice that something odd was happening. Furthermore, I gather that Tide also sent R a similar message before it finally authorised payment 2. And there was only a short period of time between R’s message and payment 2. So, I think it’s fair that R and Tide share equal responsibility for the loss from payment 2.

Turning to payment 3. By that time, R was making a third payment in less than 25 minutes to an account it had not used before. I think this was unusual in itself and irrespective of the messages I described for payments 1 and 2, I think Tide should have intervened and checked if R wanted to go ahead. Had Tide done so, I think R would have cancelled payment 3 and not gone on to make payment 4. It follows that Tide should take full responsibility for R’s losses from payments 3 and 4.

For fullness, I should also add that if Tide had responded reasonably to R’s message at the time of payment 2, it’s highly unlikely that the fraudsters would have proceeded to payments 3 and 4.

I understand that sometime after 18.30, Tide attempted to recover all the lost money through the fraudsters’ bank but couldn’t do so as the fraudsters had already moved the money elsewhere. I’ve considered if prompter action by Tide would have allowed it to recover the money lost from payment 1 and all of the money lost from payment 2 in this way. But given the timescales involved, I think this is very unlikely.

R’s response to my provisional decision

In my provisional decision, when discussing payments 1 and 2, I said that Tide had sent R a text message saying:

“Tide will NEVER call you asking you to move funds. If you did not initiate this request or received such a call, please contact us via the Tide App”.

This was based on information Tide had sent us, which at that time was not in dispute. However, R has now said that although it received this message, it was around two months before the fraud took place and was in connection with another payment, not the fraud itself. R has suggested that at the time of the fraud, Tide may have sent the message again, but to the wrong phone number.

With the information I have, I can't tell for sure whether R received the message at the time of the fraud or only in connection with the earlier payment. From what Tide has said, I'm satisfied that at the time of the fraud it sent the message to a number it had on record as belonging to R, but I can't be sure R received it. So, to be fair to R, I have assumed that there was an error and it only received the message at the time of the earlier payment.

Clearly, my assumption has no impact on payments 3 and 4, which I provisionally decided Tide should refund in full. But it is certainly potentially relevant to payments 1 and 2.

However, in my provisional decision I also said that I didn't think:

“there was anything particularly unusual about payments 1 and 2. Although they went to a new account, the amounts were not atypical for business-to-business payments. I don't think the payments alone gave Tide sufficient reasons to intervene”.

I have not seen anything to make me change my mind on this. So even if Tide did send the text message to the wrong phone number, it follows that my conclusions for payment 1 is not affected. Put simply, at that stage I think it was reasonable for Tide not to have intervened.

The situation for payment 2 is slightly more complex as by that time R had contacted Tide for help and had mentioned that things “*felt fraudulent*”. I thought that Tide and R should share the cost of the loss as while I didn't think Tide had responded quickly enough to R's request for help, I also thought it had put R “*on notice that something odd could be happening*”. Even if R had only received the message at the time of the earlier payment, this situation remains largely unchanged. From what R has told us, it was clearly aware that fraud could be taking place. So, I think it's fair for Tide and R to share the cost of the loss from payment 2.

In summary, I don't think that Tide needs to take any responsibility for the loss from payment 1, but should share equal responsibility with R for the loss from payment 2 and should take full responsibility for the losses from payments 3 and 4. Tide should therefore put things right for R by paying it fair compensation.

Putting things right

To put things right for R, Tide should:

- Refund half of payment 2 and all of payments 3 and 4 (a total of £7,857, to the nearest pound).
- Add 8% per year simple interest to the refund, from the date of the payment (1 November 2022) until the date it makes the refund.

Before closing, I would like to say how sorry I was to hear about what happened to R at the hands of the fraudsters. Although R is formally a business, there are real people with real emotions behind it, and I know they have had a torrid and upsetting time as a result of the fraudsters' crime. They have my sincere sympathy and I very much hope they never face a similar situation again.

My final decision

For the reasons I have given above, I am upholding R's complaint against ClearBank Limited, trading as Tide. If R accepts my decision, Tide should put things right by paying the compensation I have already described.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 15 February 2024.

Steve Townsley

Ombudsman