

The complaint

T complains that TIDE PLATFORM LTD trading as TIDE won't refund a £515.73 payment debited from its account which it says it didn't authorise. T is also unhappy with how TIDE dealt with the matter, even after, it says, it upgraded its account so it could use TIDE's phone service.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, T has explained that in July 2022 a payment of £515.73 was debited from its TIDE account which it says it didn't authorise. T reported this to TIDE. But ultimately, whilst TIDE offered T £25 compensation for service issues, it didn't refund T the £515.73 payment. T remained dissatisfied and referred its complaint about TIDE to us. As our Investigator here couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent T and TIDE my provisional decision earlier this month explaining what I was minded to conclude and why. T replied to say it would be happy to accept my provisional decision. TIDE replied with no further comments or information.

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 decided to uphold this complaint for the same reasons as explained in my provisional decision. I've explained why again below.

The Payment Services Regulations 2017 are relevant to this case. In short, banks will generally be liable for unauthorised payments; and a payment out of someone's account can only be authorised if the payer has consented to it. So, it's not enough for TIDE to show how the disputed payment was authenticated. To decide that T authorised the payment, I'd also need to be persuaded that T most likely consented to the payment.

Information provided by TIDE suggests the disputed payment was made to a merchant I'll call P. It appears the payment was made to P's PayPal account. T has explained that P is one of its regular wholesalers, so it's made lots of payments to P both before and after the disputed transaction. But T says it didn't authorise this particular payment to P; and when it noticed it, it questioned P which said it hadn't received it; and T has provided screenshots of messages it says are between it and P at the time which show this. In summary then: TIDE says the payment was to P; T says P said it *didn't* receive it; and T says it didn't authorise it.

In terms of authentication, TIDE says: it was an "e-commerce offline transaction"; neither cardholder nor card were present; this indicates the payment was either made by phone or via the merchant's website; and that no additional verification was triggered such as 3DS or OTP as the transaction was made offline. In other words, the only information needed to authenticate the payment were the card details, which are commonly given out to make

everyday payments online for example, and presumably these would be details P already held.

So, turning to consider consent, TIDE says there were no failed transactions or unrecognised payment attempts so the payment isn't indicative of fraud from what it's seeing when it comes to fraud or compromised cards. But I think TIDE has overlooked the point that third-party fraud isn't the only way this payment could have been made without T's consent. For example, someone acting as P could have mistakenly taken the payment. It's possible the payment might be held in a holding account somewhere, which would explain why P appears to have claimed to have not received the payment. I'm not saying this is definitely what happened; unfortunately TIDE didn't look into this. But this illustrates why the question of whether or not T most likely consented to the payment does not depend on third-party fraud.

I also don't find what TIDE says about T not following its advice to cancel its card promptly persuasive. I understand TIDE is suggesting that given by then it had told T the payment it claims was unauthorised was taken by P, you'd think T would have followed the advice to cancel its card promptly unless it thought it was actually, after all, most likely its own mistake or oversight (and that, actually, P probably had taken the payment *with* T's consent). Again, though, I think TIDE has overlooked the point that P was one of T's regular wholesalers which it had dealt with previously many times without issue; and given P appeared to be saying it hadn't received the payment, it probably would have looked more like some sort of banking error rather than fraud, so I think it would be understandable if T didn't feel the immediate need to cancel its card and incur unnecessary inconvenience in this way; at a time when T, quite reasonably, would have expected TIDE to be able to work out 'the banking error' and get its money back.

Unfortunately TIDE hasn't then, in my view, lived up to what I think were reasonable expectations. Instead, it seems to me, that TIDE has, in essence, simply pointed to T having paid P before, and it's made other unwarranted assumptions not in T's favour (for example, by questioning, without persuasive grounds in my view – especially in light of TIDE not investigating matters essentially at all – the reliability of its evidence including the screenshots it says are messages with P); and ultimately it's then failed to refund the transaction, either as unauthorised or through means of chargeback, in circumstances where, in my view, there isn't sufficiently persuasive evidence that T consented to the payment. I do not think it was reasonable for TIDE to assume T authorised the payment just because it had paid P before and to therefore not look into things further. Neither would this particular payment have looked, realistically, like something T and P would be able to resolve between themselves, given it appeared they'd already tried but neither of them seemed to have recognised the payment.

Now I understand TIDE says it's not obliged to proceed with chargeback and its current process is that, if it raises a dispute, its finance partner decides whether or not to raise a chargeback – so, it says, the decision to raise a chargeback doesn't directly lie with TIDE. However, TIDE has a responsibility to its customer, and how it decides operationally to fulfil that is a matter for TIDE. But I don't think it can sidestep its responsibilities by simply appearing to outsource certain decisions. And whilst there is no 'right' to a chargeback, I generally consider it to be good practice that a chargeback be raised if there is a reasonable chance of it succeeding.

Bearing in mind T was telling TIDE it didn't authorise the transaction and that P was claiming not to have received the payment (but TIDE was apparently sure P had received it), I can't see how pursuing a chargeback wouldn't have been eminently reasonable. We've seen no evidence P was entitled to the payment or that T received anything in return for it, so it

seems most likely that had TIDE pursued a chargeback the payment would have been recovered.

But, in any event, my decision here doesn't turn on chargeback. TIDE is not entitled to debit this transaction from T's account unless it was authorised. To decide that T authorised the payment, I need to be persuaded that T most likely consented to the payment. And in this case, for the reasons I've explained, I'm not persuaded T did consent to it. This means I think TIDE should refund to T the disputed payment of £515.73. TIDE should also pay T interest on this amount calculated at 8% simple per year from 13 July 2022 to the date of settlement.

It's common ground that the service provided by TIDE here has not been the best. TIDE offered T £25 compensation for this, but I think this is too low and that TIDE should instead pay T £100 compensation for this.

My final decision

For the reasons explained, I uphold this complaint and I direct TIDE PLATFORM LTD trading as TIDE to pay T:

- £515.73; plus
- interest on this amount from 13 July 2022 to the date of settlement calculated at 8% simple per year (if TIDE deducts tax from this interest, it should provide T with the appropriate tax deduction certificate); plus
- £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 27 December 2023.

Neil Bridge
Ombudsman