

## **The complaint**

A, 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.

A is represented by its director Mr Q - 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 4 August 2023, Mr Q was contacted by someone who claimed to be from Tide's fraud department. From what Mr Q has said, 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 a 'safe' account. Mr Q transferred £14,098 from his account. But soon after Mr Q realised he'd been the victim of a scam and tried to call Tide straightaway. Mr Q says he tried calling the Fraud Rapid Response line multiple times, starting 20 minutes after the payment had been made and continuing attempts well into the night and received no response.

Tide accepted that it should have intervened, but it felt there were instances where Mr Q should have been concerned about the actions he was taking – so liability should be split equally. It offered to pay £7,049 – representing 50% of the lost funds.

Our investigator upheld the complaint. He felt that there was no contributory negligence and therefore no deduction should apply to the refund.

Tide did not agree. It said Mr Q received a confirmation of payee (COP) mismatch warning which directly contradicted the scammer's statement that the new account was being set up in his name. Furthermore, it said that Mr Q received an additional warning advising him not to proceed with the payment if he was contacted by someone pretending to be from Tide and pressured into making the transactions.

Tide also said that Mr Q should be aware that a banking institution has the capabilities to move funds from their customers' accounts without the customer having to make a payment and this should have raised concerns for Mr Q and reinforced the fact that this was not a genuine call.

Tide also considers that as a commercial customer, Mr Q would be expected to have policies and procedures in place to identify and avoid common and known fraud risks. As the complaint could not be resolved informally, it 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.

Having done so, I've reached the same overall outcome as the investigator, broadly for the same reasons.

I have carefully noted the representations made by all the parties, but I won't be addressing every single point that's been raised. It doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

My role is to look at the problems that Mr Q on behalf of A has experienced and see if Tide has made a mistake or treated him unfairly. If it has, I seek to put A back in the position it would've been in if the mistakes hadn't happened.

This service doesn't supervise, regulate or discipline the financial businesses we cover. And my role isn't to punish or penalise businesses for their performance or behaviour – that is the role of the regulator. My role is simply to decide whether Tide's offer is a fair and reasonable way to settle A's complaint.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

There is no dispute Mr Q authorised the payments, even though Mr Q 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 A's account, A 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, regulatory 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 and made an offer to Mr Q on that basis – but for completeness I do agree. It was by far the largest transaction Mr Q had made and the payment reduced the balance significantly below its usual level and it was to a new payee. I think Tide ought to have been concerned about the activity and (having considered the warnings provided) done more than it did.

I think if Tide had intervened, it was more likely to break the spell and the scam likely unveiled. So, I agree that Tide should refund the transaction.

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

I've thought about whether A should bear some responsibility for its loss by way of contributory negligence, but I don't think it should. Mr Q 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 to create fear – in the hope it would disrupt Mr Q's thinking and make him more compliant.

From what Mr Q has said, the scammer had knowledge of A's account and a recent attempted transaction he'd declined. The number he was called from was the same as the genuine bank's number. Therefore, this gave Mr Q 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 A's account. I can understand why the fraud initially went undetected by Mr Q.

I'm not persuaded that Mr Q can reasonably be expected to have had an understanding of this type of fraud or how to protect himself against it. Tide was the professional here and is more familiar with these types of scam. A is a small and relatively new business. Mr Q as sole director deals with all payments and he mainly employs self-employed representatives. I appreciate to the trained eye and with the benefit of hindsight, there may have been some 'red flags' such as the COP mismatch. But I have thought carefully about what it is realistic to have expected Mr Q to do bearing in mind the pressure he would have been under in the moment of a call like this.

On balance, I believe that it was difficult for Mr Q to think clearly in the moment and once in the call he had little opportunity to make further enquiries. Calls like this are designed for the victim not to be able to think rationally. It is far easier to raise the points Tide now raises as a professional and with the benefit of hindsight.

Overall, Mr Q was convinced that he was talking to Tide's fraud department and taking action to protect A's funds and I don't think his actions fell below the standard expected of a reasonable person.

### **Recovery of funds**

As I am telling Tide to refund A in full, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers.

But for completeness, whilst I note Mr Q did try to contact Tide 20 minutes after the transaction. The money had already left Tide at this point. And whilst I note the funds remained in the beneficiary account for around 10 minutes after Mr Q's first attempted contact – I think even if Tide had responded at this point – by the time it had collected relevant details from Mr Q and reached out to the beneficiary it would have been very difficult for funds to be recovered in such a short space of time. I don't believe any failings here have made a material difference to the outcome of this complaint – especially as I am already upholding it in full.

I do understand Mr Q's concerns and note he made several attempts to contact Tide that evening. I appreciate Mr Q has suffered personally as a result of this scam and Tide's actions (or inactions) but as our investigator explained, I can't make an award to A for Mr Q's distress – as A can't suffer distress. Tide did respond the following morning and reached out to the beneficiary bank at that point. It offered a 50% refund around two weeks later. So whilst I appreciate there was a level of inconvenience for Mr Q, I don't think A has suffered in convenience to the extent it warrants an additional award - especially when I discount the impact of the actions of the fraudster, who was ultimately the party who perpetrated this fraud.

### **Putting things right**

In order to put things right for A, ClearBank Limited trading as Tide should:

Refund A in full (less anything already paid or recovered - I understand Mr A rejected the previous offer from Tide and nothing was recovered) – so £14,098.

Because A has been deprived of this money, I consider it fairest that Tide adds 8% simple interest to the above from the date of the transaction to the date of settlement.

If Tide is legally required to deduct tax from the interest it should send A a tax deduction certificate so A 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 A as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 22 April 2024.

Kathryn Milne  
**Ombudsman**