

The complaint

A company, which I'll refer to as S, complains that ClearBank Limited won't refund money it lost as part of a scam.

Miss S, who is a director of S, brings the complaint on S's behalf.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for my 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 outcome as our investigator for these reasons:

- Tide accepted it ought to have intervened before the first disputed payment was made and that, had it have done, it would've likely have stopped S's losses.
- But it doesn't think it should bear S's losses in full. Instead, it argues it should only refund 50% based on Miss S's contributory negligence.
- The starting point for contributory negligence is considering what a reasonable person would be expected to have done in the circumstances – and whether Miss S's actions fell below that.
- I don't think it was unreasonable Miss S trusted she was talking to Tide, given how the fraudsters spoofed Tide's number, and how their text messages appeared in the same thread as Tide's genuine messages. I've also considered how messages appeared to come from Tide when the caller told her to expect them.
- Tide submit Miss S ought to have realised it wouldn't start a conversation of this nature by text, given how long she had banked with it. But given the number of organisations we deal with, I don't find it remarkable that she didn't remember Tide's particular communication preferences in the heat of the moment.
- Similarly, I don't find it unreasonable she believed her money was at risk and, as per their instructions, transferred money to what she thought was a safe account. In saying that, I've considered:
 - Miss S's details had in fact been recently compromised, so I can see why the situation made sense to her.
 - She was given a plausible sounding response as to why the confirmation of payee didn't match.

- I accept there was a warning shown in the payment journey and the detail of this said not to proceed if someone has called claiming to be from Tide. But by this stage, Miss S believed she was genuinely speaking with Tide, not someone claiming to be them. I'm also mindful that the message was included with other information; she didn't need to interact with the warning; and it wasn't specific to a safe account scam. Taking this all into account, I don't think it was unreasonable she still went ahead.
- It seems she messaged Tide on the app beforehand, but she didn't receive a reply. So in the absence of an objection and in the pressure of the situation, I understand why she made the payment.
- Having carefully considered the circumstances, I don't think Miss S's actions fell below what a reasonable person would be expected to have done, so I don't think she is partly to blame for S's losses. It follows that Tide must refund S's remaining losses in full, alongside 8% simple interest per year to compensate S for the time it's been out of pocket.
- Tide paid S £100 for its unclear communication after Miss S reported the fraud. I'm satisfied that a fair reflection of S's inconvenience and I make no further award for its non-financial losses.

My final decision

For the reasons I've explained, I uphold S's complaint. ClearBank Limited must:

- Refund S's remaining losses from the disputed payment. I understand this to be £9,949.80.
- Pay 8% simple interest per year on this amount, from the date of the disputed payment to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 21 March 2024.

Emma Szkolar
Ombudsman