

The complaint

A complains ClearBank Limited, trading as Tide Platform Limited ("Tide"), refuses to refund it for a transaction on it's account it says was unauthorised.

What happened

A's employee, who I will call F, had his phone stolen on 15 July 2023 while at his sister's birthday party. F says he contacted the police immediately and contacted Tide as soon as possible after the incident. F says an unauthorised transaction was made on A's account using ApplePay on the stolen device. F says he thinks someone shoulder surfed him when entering his phone PIN earlier in the night and then unlocked his device to make the ApplePay payment in a retail store.

Tide says it has decided to hold A responsible for the transaction in dispute because there is no evidence to show how someone else was able to access ApplePay on the stolen device. It also says it wasn't informed the device was stolen in a reasonable amount of time, so it couldn't block the account in time. Most recently Tide responded to the investigator's view saying that it's banking app shouldn't have been installed on F's device as he is not the main account holder named on this account. Tide says it's terms and conditions only allows for the main account holder to have full access to the app, and only viewer access for any additional users. So, it says A was in breach of the terms and conditions of the account, so it is not willing to refund the disputed amount.

Our investigator considered this complaint and decided to uphold it in A's favour. Ultimately, she felt that it was more likely than not the transaction was unauthorised, and as per the Payment Service Regulations 2017 Tide are therefore liable to refund the money. Notwithstanding the fact that it may have been in breach of the account's terms and conditions. Tide was not happy with this response, so the complaint has been passed to me for a final 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.

A consumer should only be responsible for transactions made from their account that they've authorised themselves. A has said it didn't give any permission for the transaction in dispute to be made but Tide has disputed this. My role then is to give a view on whether I think A more likely than not authorised the transaction, based on the evidence I have available.

The transaction in dispute was made on F's device via ApplePay, the device which also has access to the Tide banking app. A says this device was stolen on 15 July 2023 during a night out. A has provided evidence to show that it contacted the police and received a crime reference number. The evidence supplied by A also shows it contacted Tide via live chat on 16 July 2023 at 11.58am to inform it that the device had been stolen and a pending unauthorised transaction was listed on the account. I've seen evidence that other accounts which were linked to the same device were also compromised on the same day. Based on

everything I've seen; I have no persuasive evidence to doubt what A has said about the device being stolen.

F says the device could've been accessed using biometrics or a passcode. F's position is that he thinks he could've been shoulder surfed during the night while entering the phone's passcode. There is no evidence to dispute what F has said and I think it is possible that F was shoulder surfed. F says he was out for a relative's birthday so it's likely the venue was busy with people standing around very close to each other. We've seen instances in the past where customer's passcodes have been shoulder surfed in this way, so I think it's possible it could've happened to F in the same way. Overall, Tide has not provided any evidence to persuade me F's device was not stolen in this way, and I think it's possible the thief then had access to his device from shoulder surfing him enter this in his device. So, it follows then that I am not persuaded this transaction was authorised.

Tide has suggested that F has been grossly negligent in failing to inform it that the device had been stolen in a reasonable amount of time. However, I don't agree, and I'll explain why. F's position is that the device was stolen during the night of 15 July 2023. He informed the police of the theft in the first instance, as I would expect any reasonable person to do as a first action. I've seen evidence of a live chat that F had with Tide on 16 July 2023 at 11.58am. As this is the morning immediately after the night the theft took place, I don't think this was long enough to conclude that A had been grossly negligent. The definition of gross negligence was explored by the FCA in this context stating that "the customer needs to have shown a very significant degree of carelessness" to reach this bar. And for the reasons outlined above, I don't think A's actions in this case amounts to *very significant* carelessness.

Tide has also raised the argument that F is not the main account holder named on A's account, so he should not have had the Tide banking app on his device. But I don't think this is relevant to the question of whether the transaction was authorised or not. The transaction in dispute was carried out using ApplePay on the device, and not a payment made through the banking app. And ApplePay was accessed using F's phone's passcode, not through the banking app. So, I don't think this potential breach of the terms and condition has any impact on my findings in this case.

A's account was frozen following the disputed transaction complaint. It was frozen for a total of 12 days without any information on how long it would remain frozen. A explained that this caused a of inconvenience for the company as payments and direct debits had to be reorganised. It also explained that this effected the daily workings of the business and client relationships. The investigator decided to award £300 in compensation for this. Tide have not disputed this or raised any points for me to consider lowering this award. So, as this is amount has not been disputed, I have no reason to deviate from this award.

For all the reasons outlined above, I am not persuaded the transaction was authorised. I am also not persuaded that F's actions amounted to gross negligence or that any breach of the accounts terms and conditions should have any effect on this case. Therefore, I think Tide should refund this money to A and pay compensation for the inconvenience caused.

Putting things right

ClearBank Limited, trading as Tide Platform Limited, should refund the transaction in dispute and add 8% simple interest from the date this payment was made till the date it is refunded. I also think ClearBank Limited should pay £300 compensation for the distress and inconvenience caused.

My final decision

I am upholding this complaint. ClearBank Limited should put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 26 December 2024.

Sienna Mahboobani
Ombudsman