

The complaint

S, a limited company, complains that ClearBank Limited (Trading as Tide) did not refund all the funds it lost as part of a scam.

What happened

Mr H has complained on behalf of S, and I will refer to him throughout this decision. Mr H received a request for a payment of £900 on S's Tide account that he did not authorise, so he rejected this. Soon after, he received a phone call from an individual purporting to be from Tide. They carried out a security check on him and were able to provide personal information of his, such as his name and address as well as the type of phone he was using.

The individual convinced Mr H that S's account was at risk and he needed to move the funds to a 'safe account'. He moved the following funds to the new account:

- £10,000
- £7,495
- £2,950

Mr H was told he would receive the log-in details for the new account, however soon afterwards the line went dead. He contacted Tide directly and it was at that point he realised S had been the victim of a scam. He contacted Tide to raise a claim and they felt the final two payments should have been flagged for further checks prior to being processed. So, they provided a full refund of the last two payments totalling £10,445.

Mr H also felt the initial payment of £10,000 should be included in the refund, so he referred the complaint to our service. Our Investigator looked into it and felt that the £10,000 was also out of character when compared with S's normal account activity. Because of this, they agreed this should also be refunded, along with 8% simple interest. And they did not think there should be a reduction in the refund to account for S's contribution to the scam.

Mr H accepted the findings on behalf of S. However, Tide responded and felt responsibility for the scam should be shared with S, so a reduction in the refund should be applied. This is because they felt Mr H should have read the warnings when he made the payments on behalf of S and acknowledged the risks a payment to a newly added payee poses.

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 agree with the Investigator for largely the same reasons. And I am recommending a full refund of the first £10,000 payment, with no reduction, as well as 8% simple interest from the date of the transaction to the date of settlement. I'll explain why in more detail.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that S authorised the payment of £10,000 as it believed it was protecting its funds. So, while I recognise that S didn't intend the money to go to scammers, the starting position in law is that Tide was obliged to follow S's instruction and process the payment. Because of this, S is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Tide did enough to try to keep S's account safe.

In doing so, I've looked over S's statements and compared the fraudulent payment of £10,000 to the genuine account activity in the months prior. While there was a genuine payment of £5,000 on the account previously, this in itself was somewhat of an anomaly and generally speaking the payments were not much higher than £2,000. As this was therefore a high value payment that was significantly higher than the majority of payments on the account, and it was to a new payee, I think it would have been reasonable for Tide to have paused the payment and asked Mr H some additional questions prior to it being processed. And due to the nature of the scam, I think it would have been revealed quickly thereafter. So, on balance, I think Tide missed an opportunity to reveal the scam.

I've gone on to consider whether S should bear some responsibility for the loss and if the refund should therefore be reduced. Having carefully considered everything available to me, in this particular case I don't agree that it should be reduced. Firstly, Mr H has said he rejected a payment request of £900 and shortly afterwards received a call from someone purporting to be from Tide. I therefore think it was reasonable that he believed the caller was genuinely from Tide as they were aware of the attempted payment and the exact figure of it, which ordinarily would only be information knowable by S's account provider.

In addition, the caller knew personal information about Mr H and ran through a 'security check'. This reinforced Mr H's belief that he was genuinely dealing with a member of staff from Tide. As he was reasonably convinced of the legitimacy of the call, and he was being put under time pressure to make the payments as he felt S's account was at risk, I can understand why he did not take heed of the warnings when processing the payments. With this in mind, I don't think it would be reasonable in this case to reduce the refund to account for any contributory negligence on S's part.

In summary, I think Tide missed an opportunity to reveal the scam, so I think it should refund the £10,000 payment. And I think it was reasonable that Mr H believed he was genuinely dealing with Tide, so I don't think he should bear responsibility for the scam.

Putting things right

I therefore direct ClearBank Limited to refund S the outstanding £10,000 and apply 8%

simple interest from the date of the transaction to the date of settlement.

If ClearBank Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell S how much it's taken off. It should also give S a tax deduction certificate if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold S's complaint and direct ClearBank Limited to ay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 14 March 2024.

Rebecca Norris
Ombudsman