

The complaint

G, a limited company, has complained about TIDE PLATFORM LTD. Ms C, as director of G, has brought the complaint in its behalf. The complaint is about Tide holding G liable for transactions which Ms C says were unauthorised.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

In late 2022, around £7,600 was spent on flights using G's Tide card details, over the course of a couple of hours. The flights were for an unrelated individual who lived in a different city.

Ms C received notification of the transactions and reported them immediately. After some delay, Tide replaced G's card, raised a chargeback, and provided a temporary refund. But they did not explain that the refund was temporary.

One merchant accepted the chargeback, the other didn't. Tide asked if Ms C wanted to go further with the chargeback, but didn't properly explain that this was necessary to keep the refund. Ms C pointed out she'd already had a refund, and asked why she needed to proceed. Tide told her that the dispute was successful and she had indeed been refunded, misleading her into thinking she didn't need to proceed. Ms C moved account. As she hadn't proceeded to the next stage, part of the chargeback failed and G's account was re-debited for about £4,300, creating an overdraft.

Tide held G liable for that overdraft, on the basis that the disputed payments were made with the correct card details and G had not proceeded with the chargeback.

Our investigator looked into things independently and broadly upheld the complaint. Tide asked for a final decision, so the complaint's been passed to me to decide.

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.

While it's often good practice to attempt a chargeback, a chargeback is simply one possible method for trying to get a refund. As Tide should well know, under the Payment Services Regulations, they are required to refund unauthorised payments – regardless of the outcome of any chargeback.

Tide's technical evidence shows that the payments in dispute used G's card details. But this is not enough, on its own, for Tide to hold G liable – they also need to be able to evidence that G (or Ms C in its stead) consented to the transactions. The onus is on Tide to evidence this. Otherwise, Tide have to refund the transactions.

As far as I can see, these disputed payments were only authenticated using the card details. They did not require any second-factor authentication, one-time passcodes, or any direct input from Ms C. Tide's technical data indicates that no further verification methods were used. There are a number of possibilities for how someone could have gathered G's card details without its consent and without any failure on G's part. For example, if a merchant who G had previously given its card details to got compromised. And before this incident, G had made a number of payments using its card details.

The disputed payments were made very quickly, for large amounts, and there was a blocked attempt to keep making them after Ms C reported the matter. The payments were for flights for an individual who does not appear to be linked to G, flying from a different part of the UK to where G is, to a country which G would not usually have business in. And Ms C's testimony has been consistent and credible.

So it seems both likely and plausible that the disputed payments were unauthorised. On the other hand, Tide have not provided any evidence which shows or reasonably substantiates that the payments were authorised. So I find it's most likely they were unauthorised.

Therefore, under the Payment Services Regulations, Tide were required to fund these transactions. The outcome of the chargeback was not relevant in this regard. And Tide cannot hold G liable for the overdraft which has resulted from the unauthorised payments.

I appreciate that Ms C would've liked Tide to stop the payments when she reported them. But while I understand they were showing as pending and would take some further time to display on her account, the transactions had already been made by that point, and it was too late for Tide to stop them. I appreciate this is not intuitive.

I also appreciate that it was inconvenient for G to have its card stopped and replaced. But as its card details had been compromised, it was correct for Tide to replace the card to stop any further fraud. Indeed, I find that Tide should have acted more quickly and replaced the card themselves from the offset, instead of spending unnecessary time asking Ms C to do it for them. But ultimately, it was the fraudster who committed the fraud and who is primarily responsible for the card needing to be blocked.

I agree with Ms C that Tide's communication and customer service was very poor in this case. For example, Tide were slow to deal with her urgent fraud report and often replied slowly in general. They kept trying to get her to replace the card for them without explaining things well, then did it without telling her. They directed Ms C to a paid telephone service, only for the telephone service to direct her back to the app. They didn't tell her about the merchant's chargeback response for about a month, provided an unclear explanation about what was going on, and didn't respond to Ms C's request for clarity until the day before the deadline. They didn't tell Ms C the temporary credit was actually temporary, and when Ms C later queried why she'd need to go to the next stage of the chargeback if G had already got a refund, they even told her that actually the dispute was in fact successful. This was very misleading, and reasonably gave the impression that G did *not* need to proceed with the chargeback in any case. And of course, Tide failed in their obligation to refund unauthorised payments, which they were required to do regardless of the chargeback outcome.

I appreciate that Ms C felt exceptional personal distress about the matter. I'm grateful to her for being open and candid with our service about how she felt, and of course I sympathise with the fact that it would've been very stressful to have her company be subject to fraud. As our investigator explained, the relevant complainant here is the limited company G, which is a separate entity to Ms C, and the complaint regards G's business account. And I'm afraid we cannot award Ms C personal compensation for personal distress in a complaint from the limited company about company matters on its company account.

I do see that Tide's various errors caused G some serious delays and inconvenience in trying to get this matter resolved, and from what Ms C said I understand they caused G to spend £10 on a telephone service it didn't actually need. Taking into account the impact Tide's errors had on G, alongside the guidelines for compensation I must follow, I agree with our investigator that £250 compensation is fair to put things right here.

I understand that G paid for professional representation for this case, and I appreciate that Ms C would like those fees refunded. However, our service is free to use, works in plain English, lets both sides know what evidence we'd like to see, and caters to the parties' communication needs. So there was no need to hire a professional representative to use us. Ms C was welcome to come to us on her own – it was ultimately her choice to pay for a representative. And so I can't fairly tell Tide to reimburse those fees.

Lastly, while this has not ultimately affected the merits of this case, I have noted that Ms C acted abusively towards Tide's staff. For example, at points she called them "you scum" and "you f***ing joke scumbag". No matter how frustrating Ms C found the situation, this language was unacceptable. I should explain that banks commonly have terms which allow them to withdraw banking facilities in response to abuse against staff. Our service may also dismiss complaints in response to unreasonable behaviour. I would strongly advise Ms C to avoid engaging in this sort of behaviour in future.

Putting things right

I direct TIDE PLATFORM LTD to:

- refund the disputed transactions which were re-debited, such that the overdraft debt is now cleared;
- for periods where the account was in credit: pay simple interest to G on the disputed transactions, at the rate of 8% simple a year, payable from the date they were debited until the date they're returned[†]. This is to compensate G for the time it was without its money.
- refund any interest or charges that G incurred because of Tide debiting or re-debiting the disputed transactions;
- remove any record of the resulting overdraft debt from G's credit records; and-
- pay G £250 compensation for the trouble and upset Tide caused.

† If Tide considers that they're required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, they should tell G how much tax they've taken off. They should also give G a tax deduction certificate if it asks for one. G may be able to reclaim the tax from HMRC depending on its tax arrangements.

My final decision

For the reasons I've explained, I uphold G's complaint, and direct TIDE PLATFORM LTD to put things right by doing what I've said above.

This final decision marks the end of our service's consideration of the case.

If G accepts the final decision, TIDE PLATFORM LTD must carry out the redress within 28 days of the date our service notifies them of the acceptance.

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

Adam Charles
Ombudsman