

The complaint

Ms H complains that Tide Platform Ltd (“Tide”) failed to refund transactions that left her account as a result of a scam.

What happened

Ms H operates a business account with Tide. For ease of reading, I’ll refer to Ms H (rather than the business) throughout this decision as she was the person who was involved with the scammers.

In summary – Ms H was caught up in a “safe account” scam. Between about 3.30 pm and 5.20 pm on 26 July 2023, she received several messages and calls pretending to be from Tide’s fraud team and messages from other bank’s fraud teams where she also held accounts.

Ms H initially received an alert from Tide concerning a large card payment to a furniture business and asked her to confirm if it was her or not. The message appeared to be from the same number used by genuine Tide messages.

Ms H responded “no” to the message.

She was told a member of the Tide fraud team would get in touch and soon received a call from them.

Ms H has said that the caller knew her name and some details about legitimate payments on her account. She was questioned about her security and what other accounts she held.

Soon after Ms H received other warnings from what appeared to be her other banks fraud teams. These messages referred to Tide and suggested that her identity had been compromised and a possible computer virus was to blame.

Ms H was told her card had been cancelled and she would receive a further call from a different Tide fraud team. Soon after she received another the call from Tide who informed Ms H that there was a direct debit set up to leave her account that evening, and it couldn’t be stopped.

Ms H was persuaded that a new account was the only way to protect her funds and that this would be set up so she could then immediately transfer her funds into it.

Ms H then received a message detailing the account name “S.... Ltd”, sort code and account number. Ms H explained that she was guided through the setting up of this new payee in her Tide account by the caller. During the call, Ms H said she questioned whether this was legitimate and was told to carry out an internet search of the number she was being called from. Ms H looked and found that Tide’s genuine number matched the one she was being called from.

A payment was set up for £3,880.12 (being the bulk of the funds in her account) and Ms H was told to transfer funds from another (personal) account into the Tide account. Ms H did so and then immediately sent those funds to her “new” account. The second transfer was for £1510.19 and left her Tide account with a nil balance.

Ms H was asked to download a “malware removal tool” called Anydesk. After downloading this, she was asked to log in to another of her bank accounts and ran into problems. The call

she was on was dropped and Ms H then made an outgoing call using Tide's official number. She got through to a legitimate Tide employee and it quickly became apparent that Ms H had been the victim of a cruel scam.

After reporting what had happened, Tide contacted the beneficiary bank to try and recover the funds Ms H had sent to them. Tide carried out an investigation after Ms H made a complaint about the way they'd handled her situation. Tide later accepted that they'd let Ms H down with the way they'd dealt with her initial report, particularly with how they'd treated her during what was clearly a stressful event. They offered £150 to recognise the level of service given to Ms H.

They also accepted that they should have stopped the second payment and offered to refund half of it because they believed Ms H had contributed to the loss herself. Tide believed she'd failed to read several warnings presented to her during the process of setting up the new payee and when confirming the payment.

Ms H was unhappy with Tide's offer and brought her complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the circumstances and both parties were asked to provide information.

Ms H gave a detailed timeline of events and added that she was left stressed and experienced anxiety as a result of the scam. Ms H provided copies of the text messages she received from the scammers. She was also critical of how Tide had dealt with her after becoming aware of the scam.

Tide provided details of the payments that had left Ms H's account and information about their investigation.

After reviewing the evidence, the investigator didn't think that the first payment should have been identified by Tide, but he did think that they should have stopped the second one. He discussed whether it was appropriate for Ms H to be held partly liable for the second payment (referred to as "contributory negligence") and recommended that Tide refund the full amount of the second payment and pay interest at 8% simple per annum. He thought that Tide's offer of £150 in respect of the customer service complaint was reasonable.

Tide disagreed with the investigator's recommendations and argued that:

- The use of Tide's number on the messages wasn't enough to think they were legitimate.
- Previous messages (in the same "chain") contained warnings that Tide would never call Ms H and ask her to move funds.
- There was a Confirmation of Payee (CoP) mismatch when setting up the new account for Ms H that should have concerned her. The scammers had said this was her new account, but the details were for another bank.
- A further warning was given during the setting up of the new account which stated that if someone claimed to be from Tide..... or that Ms H was being pressurised into quickly making a payment, then the transaction shouldn't proceed.

Ms H was asked for further details about the situation and was able to say that:

- She didn't receive a One Time Passcode (OTP) on the day the payment took place.
- She couldn't recall seeing a message advising her of a scam.

- She was under pressure and didn't notice later scam messages and she also thought that Tide may have changed their process.
- She was told by the scammers that the CoP mismatch was due to the new account only just being set up.

Tide were asked to make further comment and said:

- The CoP is a customer facing process designed to provide information for the account holder to empower them to make decisions concerning payments.
- New payees are dealt with "in -app" and the warnings are more comprehensive than those sent by OTPs.

As no agreement could be reached, the complaint has now been passed to me for a decision. As part of my own investigation, I wanted to understand more about the interaction between the scammers and Ms H. In summary, she was able to say that:

- The scammers knew her name, but not her business name.
- They knew her address.
- The scammers were very professional talked about other transactions from her account.
- They led her through each stage of the new payee set up process and told her what to enter and what to ignore.
- Ms H was convinced she was dealing with a legitimate fraud team at the time, although she later accepted the request to move her funds from one of her other bank accounts to her Tide account before sending it to her "safe account" was out of the ordinary.
- Ms H said they "bamboozled" her and used the pressure of the situation to convince her they were acting in her best interest.
- It all happened "pretty fast".

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.

There's general agreement about the recommendations made by the investigator apart from the issue of whether Tide should make a full or reduced refund for the second payment. So, I'll only be considering with the second payment and the issue of contributory negligence. For the avoidance of doubt, both parties have so far accepted that Tide aren't liable for the first payment and that the offer of £150 in respect of the customer service is reasonable.

Because Ms H made the payments herself (albeit under the impression she was securing her funds), the transactions are "authorised" in respect of the Payment Service Regulations 2017 (PSRs). So, in the first instance, Ms H is herself responsible for them. Both parties accept that Tide should have stopped the second payment, and the question remains whether Tide should have to refund the full payment or a portion of it.

Should Ms H be liable for part of the second payment?

It's quite apparent from reading and listening to the evidence that Ms H was a victim of a cruel scam designed to steal as much of her funds as possible. I was sorry that she suffered at the hands of these scammers and have no doubt that she's experienced considerable stress as a result of them.

The question for me to answer here is based on the concept of "contributory negligence". Essentially, this is whether the consumer should share some responsibility for their loss.

It's generally thought of as "...a lack of care on the consumer's part that goes beyond what we would expect from a reasonable person. So, the consumer's actions must be assessed against what a reasonable person in that position would have done, and their actions should only amount to "contributory negligence" if what they did fell below the standard expected of a reasonable person."

Having reviewed the evidence, I don't think that Ms H showed such a lack of care to meet the relevant standards to reduce the refund to her. I don't believe her actions fell so far below what a reasonable person would have done in such a situation. I've come to this conclusion based on the following factors:

- The scammers knew enough about Ms H to convince her they were from Tide's fraud team, and they were very professional in their dealings with her. This included the statement that they were cancelling and re-issuing her card. This followed what Ms H expected a legitimate bank to do.
- They used "spoofing" to show Tide's legitimate telephone number when calling/messaging Ms H.
- They used the threat of an impending direct debit to help persuade Ms H that her account needed to be changed.
- When she questioned whether the caller was legitimate, she was told to check the telephone number. Her internet search showed the number displayed by the scammers was a match to Tide's genuine phone number which helped to allay her initial fears.
- Ms H received messages purporting to be from her other accounts which were similarly "spoofed" to show her other banks phone details, further convincing her that she was dealing with Tide because the messages contained references to Tide's investigation.
- Ms H was on the phone almost constantly for about two hours, leaving her no time to think about what she was being asked to do.
- Ms H was taken through each stage of the process by the scammers and told what to ignore or given an excuse about what she was seeing – for example the CoP mismatch was explained away as a new account not being recognised.
- Ms H couldn't recall seeing the later warnings which were part of the new payee process (and those she was aware of were explained away).
- The scammers created an artificial sense of pressure and stress to persuade Ms H to make snap decisions about her accounts.

I've also thought about other points raised by Tide:

- They argued that warnings contained in previous messages were ignored. Here I don't think that older messages sent by Tide (that were unrelated to this issue) should be considered in respect of this scam. I don't think that Ms H was thinking about older messages at the time and nor do I think the most people in the same situation would remember previous warnings.
- The "spoofed" number shouldn't be enough to believe the scammers were legitimate. On its own I'd probably agree, but that wasn't the case here as I've already explained. There were other factors that persuaded Ms H the scammers were calling from Tide.

I do recognise that when looking at the situation with the benefit of hindsight, some of the requests made of Ms H were unusual. For instance, the request to send a payment through her Tide account first, rather than directly from her other personal account (to her safe account) was unusual. But that's not the test I'm applying here – it's what actions she took at the time and given the reasons I've outlined above. I don't think she acted unreasonably or negligently based on the specific conditions Ms H faced during this scam and therefore shouldn't be held liable for any of the second payment.

Recovery

We expect firms to quickly attempt to recover the funds from recipient banks when a scam takes place. Tide contacted the recipient bank within about an hour of the report by Ms H, which I think was a reasonable attempt to notify them as soon as they could.

Putting things right

Tide should now make a full refund of the second payment, pay 8% simple interest per year on this amount from the date of the transaction to the date of settlement (less any tax lawfully deductible).

My final decision

I uphold this complaint and in order to settle it, TIDE PLATFORM LTD should now:

- Refund Ms H the second payment in full.
- Pay 8% simple interest per year, from the date of the transaction to the date of settlement.
- If Tide considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Ms H how much it's taken off. It should also give Ms H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

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

David Perry
Ombudsman