

## **The complaint**

A company, which I'll refer to as M, complains that ClearBank Limited (a Tide account) won't reimburse the funds it lost to a scam.

Mr B, who is a director of M, brings the complaint on M's behalf.

## **What happened**

Mr B has explained that in around May 2023, he received a text from what he understood to be a postal service provider, advising a payment was needed towards an expected parcel delivery. Mr B made this payment as requested and in doing so, provided information relating to himself and his bank account.

A few days later, Mr B received a call on a withheld number from someone purporting to work for another banking provider with which he held funds. Unfortunately, unknown to Mr B at the time, this caller was in fact a fraudster – and the previous parcel text Mr B had responded to had also been part of a scam. The fraudster said there were some transactions on Mr B's account they had concerns over, and listed these transactions to Mr B. Mr B has explained that one of the payments the fraudster listed was a genuine payment he had recently made. The other payments he didn't recognise. The fraudster therefore told Mr B that there had been fraud on his account, and he needed to move his funds to a new account to keep them safe.

Mr B was asked whether he had any other online accounts he could send the funds to. Mr B advised the fraudster of his Tide account. The fraudster instructed Mr B to move all funds into his Tide account, so that his other unsecured account could be deleted and a new one set up.

Mr B initially had uncertainties about what he was being told, so asked the fraudster how he could be sure the call was legitimate. Mr B was reassured by the fraudster, who told Mr B he can understand why he feels cautious and that he'll call back on his bank's telephone number, which he did. Mr B was unaware of fraudsters being able to 'spoof' genuine telephone numbers and was therefore convinced at this point that he was speaking to a legitimate banking advisor.

Mr B sent all funds to his Tide account, after which he was advised a new bank account had been set up with his other banking provider to return the funds to. Mr B made a faster payment of £14,503.52 to the account details he was provided, believing this to be his new account. When making the payment, Tide has stated Mr B would have been provided with the following warning, advising him that the account name he'd provided was incorrect:

*'Recipient name doesn't match their account records*

*We have checked with your recipient's bank, and the name they have on record doesn't match the one you've entered.*

***Keep your money safe***

*Only add this recipient if you're sure their details are correct. You may not get your money back if it's sent to the wrong account'*

This was followed by a further warning:

*'Could someone be trying to scam you?*

*If either of the following apply, **do not proceed** with this transaction and contact us immediately:*

- *You've received a call claiming to be from Tide, HMRC or any other financial or governmental institution.*
- *You've been pressurised by someone to quickly make this transaction'*

Mr B has said he doesn't believe there were any pop-up warnings when he made the transaction, but thinks that as he believed the account was newly set up, it may not have yet had a name attached to it in any event.

After making the payment to the fraudster, Mr B was put on hold, while he understood his account was being finalised. However, Mr B was then told a loan had been taken out in his name (which he could see, from his online banking, was true) and was advised these funds also needed to be removed. Mr B had difficulty moving the funds, based on daily transfer limits, so had to speak to his banking provider to help. At this point his banking provider identified that he had been the victim of a scam and advised him the fraudulent account he'd sent funds to would be frozen. Mr B then contacted Tide to raise a scam claim.

Tide contacted the beneficiary account provider to attempt to recover M's funds, but didn't clarify further in its response to M whether it was liable itself for any of M's losses. Tide had also blocked M's account and told M it would be closing the account, but advised in its response that this was based on incorrect information and that M's account would remain open. Tide offered M £400 compensation for this error, as well as customer service issues and delays. Tide was also able to later confirm that of M's losses, £13,151.26 had been recovered by his other banking provider.

Mr B remained unhappy and referred M's complaint to our service. An investigator considered the complaint and upheld it. She considered the payment M made as part of the scam was out of character based on usual account use and that Tide ought to have intervened before processing it, which she considered would've uncovered the scam. The investigator thought the compensation already offered by Tide was fair to acknowledge the service issues M had experienced.

Tide disagreed with the investigator's view in part. It accepted the payment M made was out of character and warranted intervention, and so offered a 50% refund of M's outstanding losses. However, it also considered M should be held partly liable, based on having provided a warning regarding the payee and account details not matching, as well as a warning not to make payments when contacted by a 'financial institution' or 'pressurised to make payments', which it argued were relevant here.

As Tide disagreed with the investigator's view, the complaint has been referred 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.

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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

Taking into account regulators rules and guidance and what I consider to have been good industry practice at the time, I consider Tide should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer.

Tide has accepted that it ought to have done more to intervene when M made the scam payment, so I won't go into too much detail on this point except to say that I agree that the payment was out of character and that intervention ought to have taken place before M's payment was released. Had Tide contacted M, I see no reason why Mr B wouldn't have been honest when questioned about the payment he was making, and Tide would've been able to establish that M was making a payment towards a scam and prevented its losses. I therefore think Tide *is* responsible for M's losses.

I've then gone on to consider Tide's point that M should also be held partly responsible. I accept Tide's argument that it did provide warnings that were of some relevance to the scam Mr B was falling victim to. However, in deciding whether this is sufficient to say Mr B contributed to his losses through negligence by proceeding in spite of this, I've considered the scam as a whole and the situation Mr B was in.

I think the scam overall was quite sophisticated – the fraudsters had relied on a prior element of the scam – the fake postal message – to gain information about Mr B, allowing the fraudsters to appear more professional in their approach to Mr B, already having some of his data. The fraudsters also had access to Mr B's online banking, allowing them to share information that Mr B would only reasonably consider his bank would know. Finally, the spoofed phone number appears to have been the factor here that most convinced Mr B that this call was genuine. I can see why, without any prior knowledge of number spoofing, this would have been very convincing to Mr B and why it would have required a lot of contrary red flags to overcome this perceived evidence that the call was genuine. While Tide has stated it did provide warnings that were relevant to this scam, Mr B has no recollection of these. I think it's more likely than not that these warnings *were* presented to Mr B – but I can also understand why, based on his certainty at this point that he was speaking to a legitimate bank advisor and the pressure he was under to protect his money, Mr B might have overlooked these warnings.

Overall I think Mr B's actions were reasonable based on the circumstances of the scam he fell victim to – while Mr B initially had questions over the legitimacy of the call, the fraudster was able to navigate these with additional tactics, to alleviate Mr B's concerns. I don't think, in the circumstances of this complaint, Mr B contributed to his losses through negligent actions, so it follows that I don't think he should be held partly responsible for these losses.

Lastly, I've considered the compensation M was offered by Tide. I appreciate M didn't think this was sufficient to warrant the impact the account block had to his business, or the frustration caused from repeated, often unhelpful conversations, with Tide advisors. As the account impacted was in the name of M, and not Mr B, it's the impact to M as a business I can consider when determining whether a level of compensation is fair. I have no doubt the account block would have impacted the efficiency of M's business and caused additional problems to overcome, but overall, I think the £400 Tide has offered is a fair amount to apologise for these issues – so I won't be asking it to pay anything further.

### **My final decision**

My final decision is that I uphold M's complaint against ClearBank Limited. I require ClearBank Limited to refund M:

- the remaining £1,352.26 it lost to the scam
- 8% simple interest from the date M made the scam payment until the date of settlement
- £400 compensation if this payment hasn't already been made

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 10 June 2024.

Kirsty Upton  
**Ombudsman**