

The complaint

Mrs M is a director of a limited company which I'll call 'B'. She complains on the company's behalf about the service received from Tide Platform Limited when it requested a chargeback for non-delivery of an agreed contract.

What happened

Mrs M told us:

- In June 2022, she agreed with a third-party which I'll call 'R' that they would provide consultancy and support services to help her increase B's income to £5,000 per month of gross profit.
- She agreed a fee of £6,000, which would be payable over three installments. However, before agreeing to proceed she asked R to confirm in writing that if the expected results weren't achieved, the fee would be refunded. R agreed that if the result wasn't achieved in three months, they would give a full refund.
- B used R's service between June 2022 and September 2022, but when B's income didn't increase, she requested a refund from R. R wouldn't refund the fee, so she asked Tide to make a chargeback for the £2,000 payment she'd made using its card. (She had made chargeback requests for the other two payments to those card providers which had been accepted)
- Tide had unfairly declined B's chargeback request. It didn't do a good enough investigation about the agreement and simply accepted what R had said – despite being told that she hadn't seen the agreement or terms and conditions.
- Tide's service had been poor, and its actions meant that B became a dormant company, her credit score was affected, and she'd personally been caused distress and inconvenience.

Tide told us:

- Mrs M had contacted it on 16 September 2022 to request a chargeback for £2,000 payment made to R on 31 August 2022. The chargeback was raised, and it explained it would provide Mrs M with an outcome within 45 days.
- It reviewed the information from Mrs M and R and declined to uphold the chargeback on the basis of the information received from R. In particular it referred to R's terms and conditions which said that payments were final, and no refunds would be processed, and information showing a payment link sent to Mrs M. R also said that the refund, and cancellation policies, had been seen by Mrs M during the sign-up process.
- Mrs M had raised a chargeback about the service received from R in September

2022, however at that time, she hadn't provided a copy of the messages from R saying it would refund R if the £5,000 income level hadn't been achieved. When this evidence had been provided, it was outside of the chargeback timescales which were 120 days from the date the transaction took place.

- Mrs M had said B didn't have a contract with R, however the screen shots she'd provided of the conversation said that a contract had been signed.
- It accepted that there had been delays when replying to Mrs M, however it was satisfied it had investigated the chargeback request in line with its process and that R had provided sufficient evidence to defend the chargeback.

Our investigator recommended the complaint be upheld. She thought that B had a reasonable prospect of success for its chargeback claim had the case been taken to arbitration and therefore it would have been fair for Tide to pursue this on the company's behalf. She thought that R had told Mrs M that B would get a refund if its income wasn't more than £5,000 in the three months and she didn't agree that B had received the terms and conditions or accepted the agreement from R. So, she thought Tide had prevented B the opportunity of receiving the £2,000 back from R, and therefore it was fair for the business to refund this instead.

Tide didn't agree. In summary it said that:

- It wasn't obligated to pursue B's chargeback claim to the next stage of the process unless it had concerns about the evidence provided by R – which it didn't.
- R had confirmed in September 2022, before B had made the chargeback request, that a refund wouldn't be provided.
- It thought there had been a miscommunication between B and R, and this would be better dealt with as a civil dispute through the courts – in which it couldn't interfere.

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've decided to uphold it for broadly the same reasons as our investigator.

My role here is to decide whether I think Tide made a mistake in how it processed a chargeback request raised by B against R as the merchant provider of goods or services. And having looked at all the evidence that's been provided, I haven't seen sufficient evidence to persuade me that Tide has acted fairly here.

A chargeback is the process by which payment disputes are resolved between card issuers and merchants, under the relevant card scheme rules. So, in certain circumstances a customer such as B, may ask their card issuer, in this case Tide, to reverse payments made on their card – for example where an item they have purchased is faulty or the item or service is not as described.

If a chargeback is raised, there's no guarantee the person or company raising the chargeback will receive a refund because it may be defended by the merchant in line with the relevant card scheme rules. Chargebacks are decided based on the card scheme's rules, not the relative merits of a cardholder/merchant dispute. So, Tide's role here was to raise the chargeback on B's behalf. It then had two options 1) accept the chargeback and

refund B the £2,000 or 2) if R's defence complied with the relevant chargeback rules and an agreement couldn't be reached it could take B's chargeback claim to arbitration. Arbitration is the final stage in the chargeback process and due to its cost, card providers will generally only proceed to this stage if they have a reasonable chance of success.

I can see that Tide did initially raise a chargeback on B's behalf based on the initial evidence provided by Mrs M, so I think it acted reasonably and in line with what I'd expect here. However, based on the evidence available, I think Tide has prevented B from having a reasonable opportunity to succeed in its chargeback case at arbitration. I'll explain why.

I acknowledge that Tide says B's complaint is a civil dispute and should be pursued elsewhere. However, the process of a chargeback is in practice the request of a refund of a payment due a dispute between two parties over a transaction that has taken place. So, I think it's reasonable to believe that B's complaint about R's service can be both a civil dispute and a chargeback, and I'm not persuaded this means B's request for a refund needs to be pursued on an either/or basis.

Furthermore, I also want to make clear that I acknowledge Tide's comments that it is not a customer's right to have their card provider pursue a chargeback on their behalf, and I don't dispute that's the case. However, my role is to look at whether Tide has acted on a fair and reasonable basis whilst taking into consideration what is good industry practice at the time. In this case, I've looked at the evidence provided by B and R to allow Tide to make a decision and I think Tide should have taken B's chargeback to the next stage.

Whilst I recognise that Tide has said it was satisfied with R's defence in line with the relevant rules, I don't think it behaved reasonably with the information it was supplied. I recognise that R gave Tide a copy of its terms and conditions which say that "all payments were non-refundable". However, this was in direct contradiction to the social media message/agreement given by R on 16 June 2022.

I've seen the message chain from this date whereby Mrs M says *"would it be possible to include an option of full/partial refund clause in case we do not generate the income you guaranteed by the end of the three months contract term"* to which R says *"I'm happy to offer a full refund if we haven't been able to achieve the [income] result in three months"*, followed by *"I'm confident with our methods and see great success in with them so it's not an issue if that gives you peace of mind"*. I've seen the transactions made by Mrs M and I'm satisfied that it was only after she'd received this final confirmation from R about the refund that she decided to go ahead.

Tide has also referred to R's defence in that it doesn't offer refunds until the results have been achieved. And I can see that R did advise Mrs M of this on 15 June 2022. However, this was before Mrs M had requested the agreement of the refund clause – which was subsequently accepted by R. So, I'm not persuaded that R's defence that B shouldn't receive a refund as would have continued to support the company is sufficient here.

Tide told us that it was also satisfied with R's defence as the merchant said that B had accepted the terms and conditions, and because Mrs M had said there was a contract in place. But I don't agree. Firstly, looking at the evidence provided by R, I can't see any proof that the terms and conditions were sent, or any acceptance from B of these terms - despite the merchant providing other email evidence. So, I think on the balance of probability, that had these documents been sent to Mrs M to review as R says, that it would have been able to provide copies of the emails enclosing the documents – particularly given Mrs M's request for reassurance about the refund.

Secondly, there are emails from R to Mrs M where parts of the appendices were provided, such as on 16 June 2022 where the merchant advised what services would be provided as part of the agreement. However, I haven't seen any evidence that the documents themselves were sent to Mrs M, and I don't think it was reasonable of Tide to accept that the agreement and terms and conditions had been seen and accepted by B simply because R said they'd been provided. I think it's also worth noting here that R also says in an email to Mrs M on 16 September 2022, that there was 'no formal contract in place' and that it was 'operating out of goodwill'. Therefore, I'm not persuaded that B had accepted the terms which the merchant says it provided.

Putting things right

Based on what I've seen I'm not persuaded that Tide acted fairly by not pursuing B's chargeback claim further, given the evidence provided by the company. Tide has explained that it can no longer pursue B's chargeback claim as the scheme rules say this must take place within 120 days of when the transaction took place. Therefore, as B is unable to pursue its chargeback claim via the card scheme provider as a result of Tide's actions, I think Tide should refund B the £2,000 it requested as a chargeback, as Tide has prevented B the opportunity to put forward its claim. I also think Tide should pay B annual interest at 8% simple on the £2,000 from the date it stopped pursuing the company's chargeback claim until the date of settlement.

My final decision

My final decision is that I uphold this complaint. I instruct Tide Platform Ltd to do the following:

- Pay B £2,000 for its chargeback claim
- Pay B annual interest at 8% simple on the £2,000 from the date it stopped pursuing the chargeback claim until the date of settlement.

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

Jenny Lomax
Ombudsman