

## **The complaint**

B, a limited company, complains that Tide Platform Ltd won't refund them in full for funds they lost due to a scam.

## **What happened**

B is represented by its director, Mr R. I understand the facts of this case are largely not in dispute, so I shall cover them only briefly here.

B holds an account with Tide. One day Mr R received a call purporting to be someone who worked for the Financial Services Compensation Scheme (FSCS), in conjunction with a credit card provider. They explained that his accounts were at risk of fraud, and he needed to act to stop any fraud taking place. After taking steps to reassure himself the caller was genuine, he began to receive text messages seemingly from his various banks with a reference number given by the caller.

Mr R was told he would receive a call from Tide. When someone called Mr R says he received the reference in the Tide app. He was then convinced by the caller that his phone was infected with malware. The caller directed him to transfer the funds in B's account to a new account they had set up – and provided a website address and code so he could then access the funds. He was also convinced it would be safer to send the money in £500 amounts, with one final payment to close out the balance. After exhausting the balance in B's account Mr R transferred further funds in, which he also sent onwards to the safe account. In total Mr R transferred £42,381.08 across 82 payments.

The next morning Mr R contacted Tide, and it was discovered that he'd fallen victim to a scam. Tide contacted the receiving banks, but there were no funds remaining to recover.

Mr R felt Tide had failed in their duty to protect B's funds. Tide accepted that they could have intervened after the tenth payment from B's account, and this could have prevented further losses. But they also felt that B shared some of the responsibility, as there were signs that something was unusual. They offered to refund 50% of the losses after the eleventh payment, plus add 8% simple interest per annum from the date of loss to the date of settlement.

But Mr R felt Tide should cover all the losses that B had suffered and referred the complaint to our service. One of our investigator's considered the complaint and issued several assessments, with various thoughts on redress. The most recently issued, and relevant to this decision, said that they were satisfied that Tide should refund 50% of the payments made after the eighth payment – plus add 8% simple interest per annum to this amount.

This was accepted by Tide. But Mr R disagreed with the investigator's outcome. He didn't feel that it was fair for B to held liable considering the sophistication of the scam.

As no agreement could be reached the complaint has 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.

In doing so I've taken in to account the relevant legislation, industry guidance and codes, and what I consider to be good practice. I've considered all the submissions by both parties carefully, but this decision will focus on what I consider to be the key points of the complaint. If I've not mentioned a point in particular, this isn't because I've not considered it or failed to take it on board, it is because I do not see it necessary to reach a fair and reasonable outcome.

For clarity, in this decision I'm only considering the dispute between Tide and B in this decision. Mr R has also referred to published decisions issued in separate complaints in his submissions to our service. However, my role here is to decide this complaint based on the facts of B's individual case, with reference to what I consider to be fair and reasonable.

### **The Payment Services Regulations**

There isn't any dispute that the payments from B's account were authorised by Mr R, albeit under false pretences. Under the relevant regulations – the Payment Services Regulations 2017 (PSRs) – is that the payment service provider is expected to process correctly authorised payment instructions promptly. If the payment has been authorised correctly, then the regulations place no obligation on the payment service provider to refund any losses. The starting position under the PSRs is that Tide do not need to refund B.

But I've also considered what's fair and reasonable in all circumstances of this complaint and whether it would be reasonable for Tide to bear some of the losses.

### **Could Tide have done more to recover the losses?**

Mr R reported the scam to Tide the morning after the scam took place. From the records I've received from the receiving bank the funds had all be removed by the time Tide received the fraud report. So, I'm satisfied there isn't more that Tide could have done here.

### **Could Tide have done more to prevent the losses?**

Tide, like all regulated payment providers in the UK, have an obligation to monitor account activity for indicators that a customer may be falling victim to financial crime or financial harm. If a payment, or sequence of payments, looks particularly out of place, unusual, or high risk, I may expect Tide to intervene and ask some further questions about the account activity and the reason for the payments. The hope here is that the fraud is uncovered.

There are several aspects to consider when deciding if an intervention would be appropriate – some will include the overall value of the payment, the amount respective to the balance of the account, previous account activity, whether payments have been made to the recipient before. And any intervention needs to be proportionate to the risk involved.

Tide have already accepted they fell short here and have said they should have intervened after the tenth payment. Mr R has argued they should have contacted him earlier than that. I've considered this carefully, alongside the previous spending patterns and transactions on B's account.

I'm not minded the first transaction of £500 would arouse any suspicion of fraud. The value is relatively low compared to the balance of the account. This is followed quite rapidly by a series of payments for the same amount to the same recipient.

From the account history B regularly received incoming payments, which were then dispersed in rapid succession. For example, 19 days before the fraud there were 20 payments made in just under 25 minutes totalling approximately £16,000. The month before that a series of five payments was made in four minutes, totalling just over £3,000. This isn't to suggest there was anything wrong with these previous payments, but I'm satisfied that B's account had shown patterns of payments being made in quick succession previously.

But after the eighth payment I can see the account balance was exhausted. The account then received almost £33,000. I think this ought to reasonably have caused some concern from Tide, as this was clearly a change to the normal operation of the account. On that basis, I'm satisfied this would be an appropriate place for Tide to intervene and ask further questions.

Any reasonable level of intervention would have prevented Mr R from making any further payments from B's account – I've no reason to doubt that he would have told Tide what he believed he was doing. And financial institutions don't ask customers to transfer funds to safe accounts, so the scam would have unravelled very quickly there.

#### Should N share some of the responsibility for the loss?

I have then considered whether B should accept some responsibility for the remaining losses due to any contributory negligence. The general principle here is that as a director of the company, Mr R would be expected to act in the best interests of the company. And the starting point for contributory negligence is considering what a reasonable person would have been expected to do in the circumstances and whether his actions fell below that.

To start with, in my view this was a sophisticated scam – the fraudsters were able to spoof text messages to appear as if they were genuinely coming from Tide, and other financial institutions. From Mr R's recollections and what I've heard in his calls to Tide, it appears the fraudsters were particularly convincing, and had created an entire fake website so Mr R was under the impression he could see his company's funds being deposited in the safe account.

So, I can see why Mr R was convinced he was in contact with Tide and felt there was an urgent need to protect B's money. However, there are several other factors that I've taken into account that I see should have prompted concern.

While the fraudster was undoubtedly convincing, I'm not persuaded the overall story it plausible. Mr R says he took steps to verify the phone number of original caller was from the FSCS. But I see that a bit more checking could have shown that the FSCS would be unlikely to be involved in an active fraud investigation, considering their main work is with failed financial businesses.

I'm also not persuaded the explanation given for the need to transfer funds to the safe account. As mentioned earlier is this decision, firms don't ask customers to transfer funds to other accounts to keep them secure. They can simply block accounts to prevent suspicious transactions.

The sort code of the details provided to Mr R also didn't match Tide's, which I see should reasonably have raised concerns. Likewise, I can see that Tide presented him with confirmation that the names of the account he was paying didn't match what he had entered. The payment audit sent to us also confirms Tide presented a scam warning after the first

payment was made. The copy of the warning I've seen makes it clear that the payer shouldn't proceed if they've been contacted by someone claiming to be from Tide, or if they've been pressurised to quickly make the transaction.

I appreciate that this type of scam works by creating a sense of urgency and immediate risk, and so making it difficult to think clearly in the moment. But in this case, there were 82 individual payments from B's account that took over several hours to complete. Which seems at odds with the scammer's instructions to transfer the funds out due to an immediate risk of fraud.

I'm also not persuaded the scammers explanation for this – to ensure no individual payments go missing – is plausible. I can see from B's account history that high value payments, and sequences of payments, had been made previously. So, I see there should be a reasonable awareness that payments going missing was unlikely.

That Mr R transferred funds into B's account also seems at odds with the explanations given by the scammers. It doesn't seem reasonable to transfer funds into an account that was apparently at risk from fraudsters.

I also note from the transaction history that there was a break in payments for almost an hour after the ~£33,000 was transferred in. I may expect that Mr R could have reflected in this time that what he was being asked to do was highly unusual.

As I mentioned, this was a particularly sophisticated fraud and Mr R clearly felt under a lot of pressure to make these payments. Individually, these red flags may not be noticed in the moment, but I see that there's enough of them that it ought reasonably to have given Mr R pause. I'm persuaded that taking the full circumstances of what happened, I see that B should bear some responsibility for the remaining loss – and I'm satisfied that a reduction of 50% of the amount Tide need to refund is reasonable.

### Conclusions

Overall, I'm satisfied that Tide should reasonably have intervened after the eighth payment. But I also consider it appropriate that B bear 50% of the losses, for the reasons given above.

Tide have already refunded 50% of the losses from payment eleven onwards. This means they should now also refund 50% of payments nine and ten – which comes to £500. They should also include 8% simple interest on this amount from the date of payment to the date of settlement.

If Tide believe they are required by HM Revenue & Customs to deduct tax from the interest award, they should let B know how much has been taken off. They should also provide a certificate showing this, should B ask for one, so that B can reclaim this tax directly from HMRC if they are eligible.

### **My final decision**

My final decision is that I uphold this complaint, and direct Tide Platform Ltd to settle it as above.

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

Thom Bennett  
**Ombudsman**