

## **The complaint**

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

## **What happened**

N 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.

N holds an account with Tide. One day Mr R received a call purporting to be someone who worked for the Financial Services Compensation Scheme, 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 T'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. In total Mr R transferred £46,620.72 across 94 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 N's funds. Tide accepted that they could have intervened by the time of the sixth payment from N's account, and this could have prevented further losses. But they also felt that N shared some of the responsibility, as there were signs that something was unusual. They offered to refund 50% of the losses after the fifth 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 N 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 Tide's reimbursement of 50% of from the fifth payment onwards, plus the 8% interest award, was fair.

But they also felt that Tide had delayed reporting the scam to one of the receiving banks, and at the time of the report £4,880 was still in the receiving account. They suggested Tide also repay this, along with 8% simple interest per annum from the date of reporting to the date of settlement.

This was accepted by Tide. But Mr R disagreed with the investigator's outcome. He didn't feel that N should be held responsible for any of the losses, considering the failings on Tide's

part.

As no agreement was reached the complaint was passed to me to decide. Upon review I broadly agreed with the investigator's opinion, but felt that the redress I would award was different. I issued a provisional decision that said:

### The Payment Services Regulations

*There isn't any dispute that the payments from N'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 these regulations then is that Tide do not need to refund N.*

*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. But it doesn't appear the recall was raised until the day after. From the records I've received from the receiving bank there was £4,800 remaining in the account at the time Mr R reported the scam to Tide – this is slightly less than the £4,880 the investigator said in their assessment.*

*It doesn't appear the scammers moved this on until over an hour later. I'm persuaded that if Tide had acted faster, then it's likely this money would have been recoverable to N. So, on that basis I see it's reasonable for Tide to refund this, along with 8% simple interest per annum for the period N was without these funds, to reflect the loss of use of these funds.*

*I also see that the failure to attempt to recover these funds promptly will have caused N unnecessary disruption to the business, and some compensation would be appropriate. Considering everything, I'm satisfied £200 would be an appropriate amount.*

### 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 fifth 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 N'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 N*

*had occasionally made a few payments to the same beneficiary in quick succession, although for varying amounts.*

*By the time of the sixth payment a concerning pattern has emerged, as five payments totalling £2,500 had left the account within two minutes. I'm satisfied that this is a reasonable time for Tide to have intervened. As such, I don't see that Tide's decision to start any refund at the sixth payment to be unreasonable.*

*Any reasonable level of intervention would have prevented Mr R from making any further payments from N'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, which Tide would certainly have explained. The scam would have unravelled very quickly there.*

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

*I have then considered whether N 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 N'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 think this is relevant to the scam N was falling for.*

*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 94 individual payments from N's account that took almost an hour 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 scammer's explanation for this – to ensure no individual payments go missing – is plausible. I can see from N's account history that high value payments, and sequences of payments, had been made previously. It also seems logical that the more payments being made would lead to a greater chance of one going missing.*

*From the audit I can see there were several gaps of approximately 10 minutes in payments, that may have allowed Mr R to reflect on what he was being asked to do and realise how unusual it all was.*

*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'm persuaded that there is enough there to prompt a reasonable level of concern and take further steps to check what he was being told. Taking the full circumstances of what happened, I see that N 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 persuaded that it would be reasonable for Tide to ensure the following amounts are paid to N:*

- *Firstly, refund the £4,800 that was recoverable in full, and add 8% simple interest per annum from the date of reporting to the date of settlement.*
- *Secondly refund £19660.36 – which is the total losses from payment six onwards (£44,120.72), less the £4,800 refunded in full, and then reduced by 50%.*
- *Pay N £200 compensation.*

Tide responded with further comments about the recovery of funds, saying they felt that while they hadn't contacted the beneficiary bank immediately, they didn't feel this would have made a difference to the recover. They said that they still would have taken time to identify and investigate the scam, and that the timescale within an hour would have been too short for them do so. They said they had already provided Mr R with £300 compensation for the handling on his scam claims.

Mr N disagreed, saying that he was the victim of a crime and the strain of this has had a significant impact on him.

It now falls on me to consider the evidence afresh.

### **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.

In this final decision I'm only considering the dispute between Tide and N in this decision. My role here is to decide this complaint based on the facts of N's individual case, with reference to what I consider to be fair and reasonable. I've read what Mr R has said about the impact on him personally – but the complainant here is N, the limited company. This is a separate

and legally distinct entity to him personally. I can only consider the impact on the company.

### Recovery of funds

I've considered Tide's submissions in related to the recovery of funds, and I accept that the provisional decision was imprecise in explaining the timescales involved.

In this case Tide's records have Mr R reporting the scam at 0711. I appreciate that Tide need to be able to check that the scam report is genuine, and perform their own functions. But I'm also conscious that in this situation time is of the essence, and in this case the activity on N's account would have made it very clear that something unusual had happened. I don't see reporting it to the receiving bank within an hour as particularly unreasonable.

The receiving bank has shown that the funds were removed as follows:

- £3,250 at 0817
- £1,550 at 0843

The funds weren't removed until over an hour after Mr R reported the scam to Tide. I take Tide's point that there were several destination accounts for payments from N's accounts. I've also considered that each transaction needed to be reported manually, and there was a high volume of transactions. This would make it more difficult for Tide, and the timing is tight.

But I see it would have been reasonable for Tide to contact all the receiving banks in the first instance, rather than send multiple reports to each payment service provider in turn. Usually, a report of fraud is enough for a payment service provider to conduct a review of an account. So, I see that there was a missed opportunity to report these shortly after the fraud report was received.

The receiving bank is a large bank, who are expected to have adequate controls in place when they receive a report of fraud. On balance had Tide contacted them before the first payment, as I believe they reasonably should, then the funds would have been recoverable. On that basis, I'm persuaded that it's reasonable for Tide to refund these losses directly to N.

I've also considered Tide's comment about paying £300 compensation for service failings. My £200 award here is directly to N, for the inconvenience caused by not reporting this fraud to the receiving bank sooner.

### Should Tide have done more to prevent the transactions?

Neither party has provided any further comments on this aspect of the complaint, so I remain satisfied that Tide ought reasonably to have intervened at the sixth payment – by then the pattern of transactions had been established, and it was out of character for the usual activity on N's account.

Considering the nature of the scam, I'm satisfied that had Tide intervened Mr R would have explained what he thought he was doing, and the scam would have come to light at this point. So, I see it's reasonable for Tide to be held liable for the transactions past this point.

### Should N bear some responsibility for their losses?

Likewise, neither party has offered any specific points for me to consider in relation to N's liability. I remain satisfied with the conclusions drawn in the provisional decision that while no doubt this was a convincing and sophisticated fraud, there were also enough warning signs that something was amiss. I see that it's reasonable N bear 50% of their losses.

## Redress

I will also clarify that the redress should be carried out in a specific order.

Firstly, the recoverable funds of £4,800, as these should have been available to N in full. I've awarded 8% interest from the date the scam was reported to the date the funds are returned to N.

The second part is 50% of the total losses, less the £4,800 recoverable in full. The 8% interest should run from the date of loss to the date the funds are returned to N.

As Tide have already provided redress to N, they can recalculate the refund and interest awards, and then deduct what has already been paid.

Lastly, the £200 compensation for delays in reporting should be paid directly to N.

If Tide considers that they are required by HMRC to deduct tax from the interest award they should provide N with a certificate showing how much is taken, should they ask for one. N can then reclaim this amount from HMRC directly 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 outlined above

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 28 October 2024.

Thom Bennett  
**Ombudsman**