

The complaint

Mr A complains that ClearBank Limited won't refund the money he lost to a scam.

Mr A holds a sole trader business bank account with Tide. Tide's bank accounts are provided by ClearBank, and so ClearBank is the respondent business here. For the most part, I've referred to it for actions of both businesses. But where necessary, I've referred to Tide specifically.

What happened

The full details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll recap the key points and focus on giving my reasons for my decision:

- In early 2024, Mr A was arranging an overseas trip for him and his family. He came across a company "H" which he says claimed to offer competitive airline fares. After discussing his requirements, Mr A arranged to make the payment through his wife's account with a high street bank. But when he didn't receive a booking confirmation, Mr A asked H for a refund. He was informed that attempts to refund the money back to his wife's account were declined. He was asked to provide alternative account details.
- Mr A provided details for his Tide account. He was then asked to provide the long number on his Tide card – it was explained to him that the refund had to be processed using the same method used for making the initial payment. After providing the information requested, Mr A followed H's instructions and confirmed three transactions on his Tide app. He states he was told he needed to do this for the refund to be processed. Mr A subsequently discovered that three payments – £1,042.19, £790.71, and £384.15 – had debited his Tide account.
- The scam was reported to Tide, as well as to Mr A's wife's bank. That bank refunded Mr A's wife in full. But Tide advised Mr A to contact H directly to seek a refund. In response to his complaint, Tide said that by sharing his card details and verifying the transactions on his Tide app Mr A had authorised them.
- Our investigator upheld Mr A's complaint. They concluded that Mr A didn't give consent for payments to leave his Tide account – he thought he was approving a refund when he approved the payments. So, they recommended ClearBank to refund the disputed transactions in full and pay £150 compensation for the distress and inconvenience Mr A suffered for not being refunded sooner.
- Mr A accepted the investigator's outcome, but ClearBank didn't.
- I issued my provisional decision last month and gave reasons for why I didn't intend upholding the complaint. I explained that Mr A had consented to the execution of each transaction in accordance with the terms and conditions of his Tide account. So, even though he was tricked into doing so, Mr A would be considered liable for the payments.

- I gave both parties an opportunity to provide any further comments or evidence for me to consider. ClearBank didn't respond. Mr A replied and said he disagreed with my provisional decision. In summary, he states it's unfair that his wife's bank refunded the money sent from that account within five working days, but Tide refused. He's also said that his mental health continues to be impacted by this and he's unhappy that my provisional decision has side-stepped the investigator's findings.

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.

I thank Mr A for his comments in response to my provisional decision. I'm sorry to hear that the matter has continued to cause stress. I've carefully considered his response, but it hasn't persuaded me to change the outcome reached in my provisional decision. I realise that this will come as a significant disappointment to Mr A, but I'll explain why I still don't think ClearBank needs to do anything in the circumstances.

When a payment is disputed, the starting point in law (Payment Services Regulations 2017 – PSRs) is that the payer (in this case Mr A) is liable for payments that they authorised, and the payment service provider (here ClearBank) is liable for unauthorised payments.

To consider a payment authorised, the PSRs explain that Mr A must have given his consent to the execution of the payment transaction – and that consent must be in the form, and in accordance with the procedure, agreed between him and ClearBank.

Here, the relevant framework contract are the terms and conditions applicable to Mr A's Tide card, account, and platform. In order for the disputed payments to be considered authorised, Mr A would need to have given consent as set out in these documents.

The transactions in question were made using Mr A's Tide card. I've reviewed the terms and conditions that ClearBank has referred us to. They state:

“13.1 The Tide Platform is the primary interface for your Tide Business Account. From the Tide Platform or by using your Tide Card, you may instruct a payment order using one of the payment methods made available to you....”

and

“13.2 You can provide your consent to a Payment Order by using the identified method for giving consent indicated within the Tide Platform interface that you are using, typically a 'Make Payment' button and a verification of the Payment Order, including a fingerprint scan or the submission of a code, as required by the Tide Platform.”

Additionally, the applicable card terms and conditions state:

“6.1 The Tide Card can be used at any Merchant to make purchases in-store, via the internet or over the phone and can be used to obtain cash through ATMs... A Tide Cardholder may be required to undergo additional authentication steps to authorise certain Tide Card Transactions. Please be aware that you may not usually stop a Tide Card Transaction once it has been authorised as at that point it is deemed received by us.”

In this case, Mr A has told us that he provided his card details to the scammer. And the technical evidence ClearBank has provided shows that each transaction was approved by Mr A via the in-app 3DS screen.

As Mr A provided his consent to the execution of each transaction in accordance with the terms and conditions of his Tide card and account, under the PSRs the transactions would be considered authorised. I accept that Mr A approved the payments as part of a scam. But based on the steps he took, I'm persuaded that he did authorise them. And so, the starting position is that he would be considered liable for the payments in dispute.

Mr A states he was led to believe he was approving a refund, and that the refund had to be done across multiple transactions because H couldn't refund the amount in a single transaction.

I've reviewed the in-app 3DS screens that ClearBank says Mr A would have seen and engaged with at the time of the disputed transactions. After logging in on his Tide app, Mr A was asked to verify the payment. The screen showed the last four digits of his Tide card, the payment amount, the merchant's name, the time the payment was initiated, and the time he had left remaining to verify the transaction. Mr A then had click approve or reject.

After selecting approve, Mr A was required to enter the app's security code to complete the process. Once this step was completed, the following message appeared on the app:

"Payment approved

Return to the merchant to complete your purchase"

I acknowledge that Mr A was tricked into completing these steps. And I accept that in the moment he might not have realised that he was giving his consent to the execution of the payments. But I think the screens are clear that the purpose of completing them is to approve a payment. And this is reinforced in the confirmation screen which makes it clear that steps undertaken involved a purchase. So, I don't think the circumstances in which Mr A completed the steps means that it would be fair to hold ClearBank responsible for his losses.

There are circumstances when it might be appropriate for payment service providers to take additional steps before executing a payment transaction. For instance, when there are grounds to suspect that the transaction presents a fraud risk. I've reviewed Mr A's account statements and the payments made as part of the scam. I'm not persuaded that Tide ought to have found any of these payments suspicious to the point that it ought to have made enquiries before executing them.

Once the payments were authorised and processed, Tide wouldn't have been able to stop the funds from leaving the account. As the payments were made using a debit card, I've considered whether Tide should have raised a chargeback, and whether it would likely have been successful, once it was notified of the scam. Here, the payments were seemingly made to a genuine travel agency, and it's a common feature of the scam Mr A has described that the goods or services paid for are provided, but to a third party rather than the payer. So, on balance, I don't think it's likely that Mr A could have recovered his funds in this way.

Mr A states that Tide didn't explain any policies or procedures when he opened his account. I appreciate the strength of his feelings on the matter. But by opening an account with Tide, Mr A agreed to the associated terms and conditions. As I haven't found that there was anything particularly unusual or onerous about the terms relating to making payments from the account, I don't consider ClearBank needed to have specifically highlighted them to Mr A unless requested.

I acknowledge that Mr A's wife received a refund from her bank when the payments made from her account were reported. But the circumstances were different in that the payments from that account weren't disputed as being unauthorised. In this case, Mr A has alleged that he didn't authorise the transactions. I'm also aware that the other bank ran its own fraud refund scheme at the time of the payments. It's possible that Mrs A received a refund as her claim was considered in accordance with that scheme.

Overall, while I appreciate Mr A's frustrations, for the reason I've set out in this decision, I can't fairly hold ClearBank responsible for the money Mr A lost because of the actions of the cruel scammer.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 March 2025.

Gagandeep Singh
Ombudsman