

The complaint

A company, which I'll refer to as M, complains that ClearBank Limited has declined to refund an unauthorised payment.

Mr and Mrs M, who are directors of M have brought the complaint on M's behalf. M holds a business bank account with Tide and Tide's bank accounts are provided by ClearBank, and so ClearBank is the respondent business here, but in the decision I'll refer to Tide for simplicity.

What happened

The details of this complaint are well known to the relevant parties, and aren't in dispute, so I won't repeat them again here in detail.

Briefly, Mr M says that in October 2023 he received a call from a scammer impersonating Tide. The caller knew personal and payment information, so he was persuaded they were genuine. Mr M was asked if he recognised certain transactions and instructed to open his banking app to review a fraudulent transaction. Mr M says he was told to approve the action in the banking app to enable Tide to investigate it. However, in practice the step Mr M took approved an online card payment for £4,775.

Tide declined to refund the payment on the basis that it was 3DS verified in the Tide app, and that they didn't have chargeback rights in the circumstances.

When the complaint was referred to our service, the investigator upheld it. In summary, they thought the payment was unauthorised and that Tide should have reimbursed M. They also recommended Tide pay interest and compensation to M.

Tide didn't agree, its main point being that Mr M did approve the payment in the Tide app, and so while he was tricked, he did agree to it.

The matter was passed to me, and I issued my provisional decision on 6 February 2025 explaining why I thought the payment was authorised and didn't intend on upholding the complaint.

M didn't accept the outcome; Mr M made a number of points particularly around what more he thinks Tide should have done differently in the circumstances.

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, including Mr M's further comments, I'm not upholding this complaint. I'll

explain why.

Was the payment authorised?

- The relevant law here is the Payment Service Regulations 2017 (PSRs). When a payment is disputed, the starting point in law is that the payer (M) is liable for payments that they authorised, and the payment service provider (Tide) is liable for unauthorised payments.
- Under the PSRs, a payment is authorised if it is correctly authenticated and consented to by the consumer, or on their behalf. The PSRs say that consent must be given in accordance with the form and procedure agreed between the payer (M) and the payment service provider (Tide).
- Here, the relevant framework contracts are the terms and conditions applicable to M's Tide card, account, and platform. In order for the disputed payment here to be authorised, Mr or Mrs M (on behalf of M) would need to have given their consent as set out in these. The applicable card terms and conditions at the time say the following:

"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."

- Tide says that the payment is authorised because Mr M approved the payment in the Tide app. It accepts that he did this on the basis that he thought he was approving an investigation into a fraudulent payment, but it says the page is clear that it is to approve a payment.
- For the avoidance of doubt, I accept that Mr M approved the payment as part of a scam. But based on the steps he took I'm persuaded that he did authorise the payment on behalf of M. This is because the relevant terms explain that completing additional authentication steps on card payments authorises them, and therefore this is the agreed procedure for giving consent.

Are there any other reasons why it would be fair for Tide to provide a refund?

- I've thought about whether it would be fair to hold M liable for the payment given that Mr M thought he was approving an investigation rather than a payment, and as part of this I've reviewed what the screens Mr M would have seen at the time looked like. I think the screens are clear that the purpose of completing them is to approve a payment as it specifies the name of the merchant, the payment amount, and the options are "approve payment" or "reject payment". Here Mr M selected "approve payment" – so I don't think it would be fair to hold Tide responsible for M's losses on this basis that Tide's platform was unclear.

- Having taken into account longstanding regulatory expectations and requirements, and what I consider to be good industry practice, Tide ought to have been on the look-out for the possibility of fraud and made additional checks before processing payments in some circumstances. I've reviewed M's account statements for the 6 months prior to the disputed payment, which I think is a reasonable period to reflect normal account activity. However, having considered this, when the disputed payment was made, it's value and who it was made to, I'm not persuaded Tide ought to have found the payment suspicious, such that it ought to have made enquiries of M before processing them. This is because M held a business account, payment was to a legitimate merchant and the payment was not out of character for the account. Tide would not have been aware before the payment was processed that M didn't know what goods or service the merchant provided.
- I appreciate Mr M reported the fraud, but once the payment was authorised by Mr M, on behalf of M, and processed by Tide, Tide would not have been able to stop the funds from leaving the account.
- I've considered whether Tide did enough to try and recover M's loss upon being made aware of the scam. As this was a pre-paid Mastercard the relevant recovery method would be a chargeback. Here, Tide has explained that it didn't think M had chargeback rights because the payment was authorised via 3DS also known as stronger authentication – i.e. the additional step Mr M took to approve the payment in the Tide app. Chargeback's can only be raised on specific grounds set out in the card scheme rules – and under the applicable rules a payment approved this way can't be raised as an unauthorised payment. I've also thought about whether any other grounds apply to M's circumstances, and I note that when Mrs M contacted the merchant that the payment was made to, she was told that "the order had already been fulfilled". With this in mind, I think it's more likely than not that the merchant would have successfully defended any claim made on the basis that M didn't receive the goods/service as it does appear to have been provided – likely to the scammer in the circumstances. So, I don't think M has lost out as a result of Tide's decision not to pursue a chargeback.
- Mr M says that the scammer knew sensitive information that Tide had an obligation to keep confidential, and that he would not have been as easily misled if the scammer hadn't had this. I do appreciate that the scammer used sophisticated techniques to persuade Mr M that they were Tide, but I haven't seen any evidence to support that the information was obtained as part of an error by Tide.
- Mr M also says that it was difficult to communicate and report the fraud to Tide, he believes that if Tide had acted more quickly, they could have contacted the merchant sooner and prevented them from providing the goods/service. Our service is not a regulator and doesn't set business processes, but Mr and Mrs M have told our service that they opened a chat with Tide and were able to "get through promptly" and I've explained above why Tide couldn't have stopped that payment at this point. I've also explained why the applicable recovery options for this type of payment would have been unsuccessful in the circumstances. There is no guarantee that had Mr and Mrs M been able to contact the merchant sooner they would have received a refund, and as I'm not persuaded that there was an error by Tide, it wouldn't be fair to hold it liable on this basis.

For the reasons explained above, while I do appreciate that Mr M fell victim to a cruel scam, I'm not upholding this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 26 March 2025.

Stephanie Mitchell
Ombudsman