

## **The complaint**

A company, which I'll refer to as 'Company A', complains that ClearBank Limited, trading as Tide ('Tide'), won't refund it for the money lost when its director, Mr A – who brings this complaint on A's behalf – fell victim to a scam.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But, in summary, I understand it to be as follows.

In or around October 2022, Mr A heard about an investment opportunity with a company which I'll call 'V' from a mutual contact who had already invested £20,000 with V. Mr A was shown the returns that could be made through Foreign exchange ('Forex') trading.

Interested in what he had seen, Mr A then had contact with one of the founders of V. Mr A was sent emails with brochures and marketing materials and had two calls with V. Mr A was told that he could expect returns of 1-6% a day.

Believing everything to be genuine, Mr A decided to invest. Mr A took out a loan in A's name for £10,000 and borrowed £7,500 from a relative. On 28 October 2022, Mr A then made a £20,000 payment from Company A's business account with Tide to a personal account of one of the founders of V.

Mr A explains V encountered problems with the Financial Conduct Authority ('FCA'), and the FCA were investigating V as it wasn't properly regulated as claimed. Mr A wasn't unable to withdraw any of his funds or profits.

Mr A, believing he had been scammed, raised the matter with Tide in November 2023. Tide responded advising it was unsuccessful in attempting to recover any of the funds. A formal complaint was brought in June 2024, and Tide issued its final response letter in July 2024 – not upholding Mr A's complaint.

Unhappy with Tide's response, Mr A brought Company A's complaint to our service. One of our Investigators looked into things, but didn't think the complaint should be upheld. In summary they said, as Mr A had advised the investment was for personal gain, it wouldn't be fair and reasonable to ask Tide to refund the money to Company A, as they didn't consider it could be said that Company A's money had been lost.

Mr A didn't agree with our Investigator's view. In summary he said it was unfair to say that a person cannot be using a business to generate income for themselves as that defeats the purpose of any business, as no business operates for the mere purpose of existing as a business.

Mr A acknowledged that, as a person, he is a separate entity from Company A, but considered the loss was attributable to Company A, as it was liable for the business loan taken out, as well as the loan from the family relative.

As agreement couldn't be reached, the complaint has now been passed over to me for a final decision.

### **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'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Upon reading all the available evidence and arguments, I do not uphold this complaint. I consider that the fair and reasonable outcome, in all the circumstances, is that Tide is not liable to refund the payment made from Company A's account. I will explain why.

For the avoidance of doubt, this decision is in relation to the payments that left Company A's business account. In these circumstances, Company A is the eligible complainant. As the director, Mr A can represent Company A, but personally he is considered a separate legal entity, distinct from Company A – which I can see Mr A acknowledges.

It isn't in dispute that Mr A authorised the payments from Company A's business account that are now in dispute. So, the starting position here is that Tide ought to have followed the instructions it was provided with and processed the payments.

Both sides accept that the payment was seemingly made as result of a scam and has resulted in the loss of a significant sum of money. What needs to be determined here is whether Tide should now reasonably be held liable for that amount.

In considering this, the first point to determine is whether the loss was sustained by Company A. I could not reasonably expect Tide to reimburse a financial loss incurred by another party.

As a result, I've thought very carefully about what Mr A has told us in this regard. Based on everything I've seen, I'm persuaded that it's more likely than not that the money being paid from Company A's account was for a personal investment being made by Mr A. I'm not persuaded Mr A has provided evidence that fairly and reasonably demonstrates that the investments were being made on behalf of Company A. I say this because our Investigator, when reviewing this case, asked Mr A about the purpose of the investment in order to establish if it was for personal gain or for the business'.

The questions the Investigator asked, and Mr A's responses (via his representative) to those questions, are below:

Investigator Q: *"Can you tell me the reason for making this investment?"*

Mr A's response: *"...the investment was made to generate a return on their initial investment to provide for their family."*

Investigator Q: *“What were the returns to be used for?”*

Mr A's response: *“The returns were intended to provide for our client's family, support their retirement, and assist with paying bills.”*

Investigator Q: *“If they were to be reinvested into the business please provide information from when the payments were made to show this. This can be minutes of a meeting or confirmation from an accountant.”*

Mr A's response: *“This is not applicable, as the returns were not intended to be reinvested into a business but rather to support our client's personal financial needs.”*

So, Mr A was clear in telling our Investigator that these investments were made for personal gain and were not for the business nor were they to be reinvested into the business.

I appreciate that Mr A took out a loan in Company A's name with those funds being credited into Company A's business account, and that £7,500 was received by a relative. However, once they entered into Company A's business account, they became Company A's asset.

A limited company's assets belong to the company itself, not the owner or the shareholder. When considering that, and based on what I've seen, I'm satisfied that, on balance, the subsequent spending on Company A's account was for the purposes of Mr A's own personal gain, rather than for any business-related activity.

And that has consequences for Company A's complaint about Tide.

While Company A may be out of pocket because of Mr A's loss, that is not a direct loss. Broadly speaking there are two potential scenarios in relation to the debt created by the spending on Company A's business account.

First, that this was, in effect, Company A lending its money to Mr A personally. If Mr A had borrowed money in this way from Company A for personal gain, then he would be liable to repay that debt to Company A. And in this situation Company A can't fairly be considered to have suffered a loss, as it is still owed the money by Mr A as the debtor in these circumstances.

The second potential scenario is that by spending on Company A's account in this way, Company A was discharging some debt owed to Mr A. Be that a dividend payment, wages or similar. But in this situation, again, Company A hasn't suffered a loss. The debt has been discharged, and Mr A was provided with what he was owed (which he then paid out).

Unfortunately, while Mr A then lost the funds he paid out, as a consequence of the scam, Company A has not suffered a loss – Mr A has, which is not the same thing. Rather, Company A loaned funds to Mr A, meaning Mr A now owes that money to Company A (or instead it discharged a debt owed to Mr A).

It therefore follows that there is no loss on Company A's part for which Tide could fairly be held responsible. And Tide did not have a customer relationship in respect of Mr A making a payment from Company A's account for a personal investment.

Overall, on balance, I don't think the fair and reasonable outcome here is to tell Tide it needs to do more. Whichever approach I take to the spending on Company A's account, I'm not persuaded that Company A itself has suffered a loss. So even if I were to conclude that there had been a clear and obvious failing by Tide in its handling of matters (which, for clarity I haven't considered), it wouldn't be fair and reasonable for me to ask it to do more.

I do understand that this is not the outcome Mr A would have hoped for, and I don't underestimate his strength of feeling and why he is looking to recoup the loss. That said, my role here is to assess Tide's liability. Having done so, I don't consider it fair to direct Tide to reimburse Company A.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 16 July 2025.

Matthew Horner  
**Ombudsman**