

The complaint

L, a limited company complains that ClearBank Limited (a Tide account) unfairly refused to refund all the money it has lost to a scam.

Mr C, a director of L, brings this complaint on behalf of L.

What happened

Although a third party representative has brought this complaint on behalf of L, for ease I will refer to L and Mr C throughout. I will also refer to ClearBank Limited as Tide.

L has fallen victim to a safe account scam.

Mr C says that in August 2023, he received a call from someone pretending to work in Tide's fraud team ('the scammer') The scammer called from a telephone number which appeared to be that of Tide – but was spoofed. The scammer told Mr C that L's account was at risk and that L's funds needed to be moved to a new account to protect them.

Mr C says that the scammer was very calm and was able to "prove" to him that the call was real by sending a text message from the same number used by Tide to send a genuine text message in January 2023.

Then the following payments were made from L's account to an account Mr C understood had been set up by Tide to protect L's funds.

Date	Time	Transaction	Amount	Remaining Balance
23/08/23	11:46	Faster payment to new details (scam payment)	£7,900	£127.67
23/08/23	12:36	Account top up	£280.57	£408.24
23/08/23	12:41	Account top up	£2,333.74	£2,741.98
23/08/23	12:44	Faster payment to new details (scam payment)	£2,659.23	£82.75
Total Loss			£10,559.23	

Shortly after Mr C made the payments, he realised something was amiss and reported the matter to Tide.

Before L brought its' complaint to our service, Tide acknowledged that the payments made were outside of L's usual spending patterns and took up nearly all the available account

balance. Tide said that it should have queried the transactions at the time, and that if it had done so, it could have prevented the losses.

As Tide thought that several red flags should have alerted L to the fact that something was wrong, it reimbursed 50% of the amounts sent by faster payment on 23 August 2023.

What did our investigator say?

She noted that Tide accepted the payments were out of character for L and that it should have done more, so our investigator didn't go into further detail about what more Tide could have done.

Given the sophisticated nature of the scam, our investigator didn't agree with Tide's arguments that Mr C on behalf of L should have realised the payments it made to the newly set up account were unusual.

Our investigator noted that Tide mentioned it displayed a warning against transferring money to a safe account. She invited Tide to supply this to her but didn't think it would outweigh the sophistication of the scam.

Our investigator thought that Tide missed an opportunity to discuss the payment with Mr C. She said that Tide should've intervened in the payment and, if it had, it's likely the scam would've been unveiled and all of L's loss would've been prevented. So, she recommended that Tide reimburse L's full financial loss, with interest.

In response, Tide stated that L would have been provided with the following warning, advising that the account name it had provided was incorrect:

'Recipient name doesn't match their account records

We have checked with your recipient's bank, and the name they have on record doesn't match the one you've entered.

Keep your money safe

Only add this recipient if you're sure their details are correct. You may not get your money back if it's sent to the wrong account'

This was followed by a further warning:

'Could someone be trying to scam you?

*If either of the following apply, **do not proceed** with this transaction and contact us immediately:*

- You've received a call claiming to be from Tide, HMRC or any other financial or governmental institution.*
- You've been pressurised by someone to quickly make this transaction'*

Our investigator considered the warnings but didn't change her view. This was because she didn't consider them strong enough to find that L should be held partially liable for its loss. Our investigator thought that the scam warning didn't include information about spoofing phone numbers and text chains. So, it didn't paint a picture of how sophisticated the scam can be. And the confirmation of payee warning didn't mention the possibility of being scammed – just that if the money is paid to the wrong recipient, it may not be recoverable.

Tide did not accept our investigator's recommendations, saying it could not understand why our investigator thought the warnings were not strong enough. Tide said the scam warning

told L not to proceed with the transaction and to contact it immediately if contacted by someone posing as Tide. So, it didn't see how including information about the possibility of number spoofing would have added to the warning. Tide also highlighted inconsistencies in our approach to similar complaints, pointing to an investigation view which accepted that the consumer was partially responsible for the loss for similar reasons to the ones Tide has given in this current complaint.

As Tide remains unhappy with the investigation outcome, the complaint has come to me to make 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.

It's not in dispute that L has been defrauded. It's also common ground that the payments made to the scammer were 'authorised'. Mr C says that the scammer set the payments up and he approved them. So, even though he didn't intend the payments to go to a fraudster, the payments were 'authorised' under the Payment Services Regulations. Tide had an obligation to follow the payment instructions it received, and L is presumed liable for its loss in the first instance. But that's not the end of the story.

As a digital business banking provider, taking into account the law; regulator's rules and guidance; relevant codes of practice; and, what I consider to have been good industry practice at the time, I consider Tide should fairly and reasonably:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

Tide accepts that the transactions were out of the ordinary for L and that it should have intervened. So, I don't think I need to go into too much detail on this point.

It doesn't appear that the scammer was coaching Mr C. So, it seems likely he would have spoken freely to Tide. If Tide had asked Mr C some questions, it's likely he would've explained that he was approving transfers of money out of L's account to a 'safe account' on Tide's instructions after being told L's account had been compromised. And, with its industry knowledge of fraud and scams, Tide ought reasonably to have realised that a safe account scam was underway. If Tide had done enough here, I agree that the payments to the scammer would've been prevented. So, I think Tide is responsible for L's losses.

I've thought about the arguments which Tide has raised about L bearing some responsibility for its loss by way of contributory negligence but I don't think it should. L fell victim to a sophisticated scam. I have seen evidence that the message from the scammer appeared in Mr C's genuine Tide message thread. So, Tide's number was spoofed, and he received a

text that appeared to come from Tide's genuine telephone number. Overall, he was convinced that he was talking to Tide and taking action to protect the funds in L's account. I can understand why the fraud went undetected by Mr C.

Tide has said that Mr C ignored clear warning signs and proceeded with the disputed payments despite his suspicions. Mr C has explained that he was suspicious at one point during his conversation with the scammer, but his mind was put at rest when he received a text which matched the number previously used by Tide. We have evidence that the text message Mr C received included the Tide banner and the new account number. Given this persuasive evidence, Mr C felt reassured that he was speaking to Tide. Mr C says he checked the account existed before transferring any money and it had details of his business and names in the new account. And I'm not persuaded that in the moment, Mr C would have noted the different sort code or recognised that the new account wasn't with Tide, particularly as by this stage he was satisfied he was speaking to a Tide employee. Mr C found the scammer never pressurised him and was very convincing.

There were undoubtedly some 'red flags' Mr C could've picked up on – including the scam warning which Tide presented. Perhaps Mr C could've done more to protect L from financial harm, particularly with the benefit of hindsight and/or with more time to think. But the scam took place over a short period of time. In the heat of the moment, and fearing for the safety of L's funds, I don't think it's unreasonable that Mr C didn't realise L was being defrauded. Overall, I don't think his actions fell below the standard of care I would expect a reasonable person to take in the circumstances. So, it follows that I don't think L should be held partly responsible for its losses.

I think the fair and reasonable outcome is for Tide to reimburse all the money L lost to this scam, along with 8% simple interest from the date of loss to the date of settlement (because, from what I've seen, I think it's likely that L's funds would've remained in its account but for the scam).

In the circumstances, I don't need to go on to consider whether Tide acted with care and urgency in trying to recover L's money.

Putting things right

Tide should reimburse L's full loss, along with 8% simple interest from the date of loss to the date of settlement, taking account of any refund already provided to L.

My final decision

My final decision is that I uphold this complaint and direct ClearBank Limited (Tide) to put things right as set out in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 1 April 2025.

Gemma Bowen
Ombudsman