

The complaint

U, a limited company, has complained ClearBank Limited, trading as Tide, won't refund them for nine transactions they didn't authorise.

What happened

U is a limited company with one director, Mr K. U holds a business bank account with Tide which provides a debit card that Mr K uses. I shall refer to Mr K throughout this decision for ease.

On a night out in September 2024, Mr H had his personal phone stolen, along with his wallet and laptop. This phone was subsequently used to access his banking apps with Tide, and another account Mr K held. Nine transactions were made in the early hours of 19 September. These were for transport, cash withdrawals and to make large-value transfers using international transfer services. Transactions were authenticated variously by Apple Pay, 3DS and PIN.

Mr K was able to secure another phone the following day and called Tide to report the fraud that he then was able to view. The other bank which had also been compromised identified unusual payment behaviour, blocked some transactions and refunded those that were made using contactless technology.

Tide wasn't convinced by Mr K's narrative and felt he'd changed his story from his phone being lost to stolen. They wouldn't refund U as they also believed the transactions were similar to U's normal use.

U brought their complaint to the ombudsman service.

Our investigator confirmed he'd not received sufficient evidence from Tide to show U had authorised these transactions. He asked Tide to refund £13,215.29 to U, along with 8% simple interest.

U accepted this outcome. Tide remained of the view that Mr K's story was inconsistent and that the train of transactions didn't necessarily resemble fraudulent use, U's complaint has been referred to an ombudsman for 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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law

and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to U's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. There are exceptions to this and that would include if the customer had acted with gross negligence or intent to allow any security details – including the card and PIN or online banking details – to be used by someone else.

I note Tide hasn't suggested that U has acted in a grossly negligent manner, rather that the terms and conditions of the business account allow them to decide not to refund businesses if they believe security details haven't been kept safe.

Firstly our service – and Tide – is aware that fraudsters can access banking apps when they have access to a stolen phone. Mr K has provided evidence to show he was able to get a replacement SIM card and new mobile device on 19 September which fits with what you'd expect to see after a theft.

If a fraudster had access to Mr K's phone – and laptop and wallet – I'm satisfied there's enough there to suggest these fraudsters were able to access Mr K's personal and password data to enable an account takeover to happen.

I've considered whether I believe there's enough evidence to suggest this constitutes gross negligence as required by the Financial Conduct Authority. But I don't believe it does. This doesn't amount to significant carelessness as required by the FCA guidance.

Tide is also concerned at Mr K's story being changed. But I believe this is irrelevant. Mr K was due to fly overseas the day of the theft so I can imagine he was feeling a reasonable level of stress. As he himself has stated, whether his phone was lost or stolen, the result is the same.

I also disagree with Tide's view about the transactions. In fact I think these very much resemble fraudulent transactions. There's three transfers using international transfer services for rather odd amounts: £4,801.99, £3,991.99 and £4,001.99. These happen within two hours of the theft with the first of these three happening at a different IP address to the other two. This suggests to me that the hardware had been swiftly moved elsewhere to enable any passwords and other data to be broken. The initial card and Apple Pay transactions are for transport and small purchases.

The two cash machine withdrawals happen last. Tide's audit information suggests that transactions were attempted and failed – both for incorrect PIN and then insufficient funds. They surmise that it would be usual for the card transactions to come first but I believe by this stage the fraudsters had been able to make large transfers elsewhere so essentially the cash machine withdrawals were chump change. And the fact that an incorrect PIN was used does suggest the use was being done by someone who was unsure about the correct PIN.

A further card transaction was attempted in October 2024 but by this time Tide had blocked use of this card. Again this confirms to me that all this use was fraudulent.

I don't believe there's sufficient evidence to show these transactions were authorised by U. They must be refunded in full, along with 8% simple interest.

Putting things right

As I don't believe these transactions were authorised by U, Tide will need to refund

£13,215.29, along with 8% simple interest a year.

Our investigator also considered U's additional complaint point that they were finding it difficult to get Tide to remove a pre-approved credit limit from U's account. I am sure this was set up by the fraudsters to enable them to use more funds and must be causing U some disconcertion. Tide will need to re-set the parameters of U's account to ensure this and any other similar offer is removed.

My final decision

For the reasons given, my final decision is to instruct ClearBank Limited, trading as Tide to:

- refund £13,215.29 to U;
- add 8% simple interest a year from the 19 September 2024 to the date of settlement; and
- remove any pre-approved credit limits or similar from U's account that were set up by the fraudsters.

Under the rules of the Financial Ombudsman Service, I'm required to ask U to accept or reject my decision before 6 January 2026.

Sandra Quinn
Ombudsman