

The complaint

P, a limited company, complains that Clearbank Limited (trading as Tide) hasn't refunded the money it lost when its director fell victim to a scam in 2022.

Mr T, director of P, authorised the relevant payments and brings this complaint on P's behalf.

Tide branded accounts are provided by Clearbank Limited, but for convenience and clarity in what follows I will refer to Tide.

What happened

The circumstances that led to this complaint are well known to both parties, so I will summarise the relevant facts.

P holds an account with Tide, with Mr T as the authorised signatory. In early June 2022, Mr T sent seven payments to an emoney wallet held by his brother. His brother then transferred the funds to a cryptocurrency exchange, purchased cryptocurrency, and then sent this on to a wallet he believed was linked to freelance job opportunity, but which in reality was controlled by scammers.

When the scam came to light Mr T reported the matter to Tide. Tide didn't consider it was liable for these payments. It had followed the instructions of Mr T, who had correctly authorised the payments on behalf of P. Mr T's brother had sent the money on to a cryptocurrency exchange and then converted the money into cryptocurrency, so nothing could be recovered.

Mr T didn't accept this outcome and asked for the matter to be reviewed by this service.

Before reaching any findings, our Investigator asked why P had been paying the funds to Mr T's brother – rather than for example Mr T paying from his own funds. Mr T explains he'd intended: *"to invest for business purposes to gain further income for the business"*. The Investigator also asked if either Mr T or his brother had received any returns. Mr T said *"No, not back into the bank accounts"*.

Our Investigator didn't think Tide needed to refund these payments. He didn't think there had sufficient reason for Tide not to have carried out Mr T's instructions. The relevant payments wouldn't have stood out from the usual account activity on this business account. The account had a history of payments of similar value.

Mr T didn't accept the Investigator's findings. I have therefore been asked to make a final decision on the matter.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, 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 be good industry practice at the time.

The starting position in law is that P is responsible for properly authorised payment transactions. Tide's primary duty here was to carry out those instructions without delay.

Based on the evidence provided, I am satisfied that Mr T correctly authorised these payments from P's account to an emoney account held by his brother. In the first instance therefore, P is liable for those transfers from Tide.

However, that being said, I consider that as a matter of good industry practice Tide should have been looking out for payments or payment patterns that were significantly out of character or unusual and that might therefore be indicative of the potential for financial detriment to its customer through fraud or a scam. So I've thought carefully about whether the available evidence demonstrates that Tide did enough given the specific circumstances here.

I find it relevant that this account was held by a limited company. All else being equal, the type of transactions that might be expected for such an account differ from those of a consumer account. And having considered the prior year's account history, I consider that payments of a similar size and frequency were not unusual for P's account with Tide.

Mr T argues that the destination ought to have been a cause for concern. But I don't agree. Here the payment was being sent to a wallet held by his brother with legitimate emoney provider. P's account shows other payments that appear to be destined for accounts in his brother's name. This wasn't unusual in itself. And while the money was subsequently transferred out of that emoney wallet to a cryptocurrency exchange, that was a distinct payment - separate to that made from P's account with Tide. I can't reasonably expect Tide to have anticipated this. So I can't fairly say Tide should have had concerns these payments were likely connected to a cryptocurrency based scam.

Taking everything into consideration, I find that the payments Mr T made from P's Tide account do not look significantly different to P's prior account usage. And I don't think Tide was at fault in not identifying these payments were other than legitimate transfers.

In short, while I've carefully considered all of the points Mr T has made, I do not find there was enough here for me to say that Tide needed to intervene rather than fulfil its primary obligation to carry out P's authorised payment instructions. I can't fairly hold it liable here, I do not find it at fault in making the payments in line with those requests at the time.

Lastly, I am satisfied that Tide could not have recovered the money Mr T had transferred. Those funds had been moved to a crypto-exchange before being used to purchase cryptocurrency. By the time Tide had been alerted to the scam I am satisfied there was no reasonable prospect of recovering P's funds.

All considered I don't find Tide is liable to P for these payments.

My final decision

For the reasons given above, I do not uphold P's complaint about Clearbank Limited (trading as Tide).

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 28 October 2023.

Stephen Dickie
Ombudsman