

The complaint

S, a limited company, complains that Tide Platform Ltd (“Tide”) won’t refund a number of payments lost to an investment scam.

What happened

The detailed background to this complaint is well known to both parties. So, I’ll only provide a brief overview of some of the key events here.

S’s Director, Mr J, made some payments from S’s business banking account to what he believed to be a legitimate investment company. Unbeknown to Mr J at the time, he was actually dealing with fraudsters.

Between 20 July 2020 and 28 October 2020, Mr J sent a number of payments to the fraudsters from S’s business account. However, the returns Mr J was promised did not materialise and Mr J was unable to get any of his money back. Mr J also came across a number of other people who had invested but not seen any of the promised returns. At this point, Mr J realised he’d been scammed, and he contacted Tide.

Tide declined to offer Mr J a refund of the payments that left S’s business account. Mr J complained and the matter was referred to our service.

One of our Investigators looked into things, but they didn’t recommend that the complaint should be upheld. They said they weren’t persuaded that S had suffered a loss in the circumstances set out by Mr J.

Mr J, on behalf of S, disagreed and asked for an Ombudsman to make a decision. So, the complaint was passed to me.

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.

This decision is solely in relation to the payments that left S’s business account. In these circumstances, S is the eligible complainant. As the Director of S, Mr J can represent S, but personally he is considered a separate legal entity, distinct from S.

It isn’t in dispute that Mr J authorised the payments from S’s business account that went to the fraudsters. So, the starting position here is that Tide ought to have followed the instructions it was provided with and processed the payments.

When asked whether the payments that left S’s business account were in relation to a personal investment or an investment on behalf of S, Mr J confirmed that the payments had

been made in relation to a business investment being made on behalf of S in order to raise capital that the business could later reinvest. However, the contracts drawn up in relation to the investment were in Mr J's personal name.

In light of the conflicting information, our Investigator asked Mr J if he could provide any evidence that could show that the investments were being made on behalf of S – such as evidence of conversations with his company accountant showing the funds were being used to raise capital for business purposes. Mr J was able to provide evidence of a discussion about the payments that left S's account with his accountant – but these took place over a year after the payments had been made and appeared to show that the accountant had not known about the payments at the time.

Mr J also provided information to show that the majority of the payments that left S's account were in relation to investment properties using the same business model as S. He said this showed that the investments were directly related to his business.

I've thought very carefully about what Mr J has told us and based on everything I've seen; I'm persuaded that it's more likely than not that the money being paid from S's account was for a personal investment being made by Mr J in a personal capacity. I say this because Mr J hasn't provided me with any persuasive evidence to demonstrate or suggest that the investment was being made by S in its own capacity – despite it being of a similar nature. I say this because:

- The contractual agreements drawn up at the time the payments were made show the named parties entering into the agreements are Mr J and the fraudster – there is no mention of S. As I mentioned above, Mr J and S are two separate legal entities and only Mr J is named on the contracts drawn up at the time. This suggests to me that it was Mr J who was entering into a contractual agreement with the fraudsters, not S.
- In messages shared between Mr J and the fraudster that have been provided to me, Mr J mentions that he is looking for some “passive income” which suggests to me that Mr J is seeking additional earnings. There is no mention of this income being related to his business.
- The final payment that left S's account doesn't appear to be in relation to a property investment at all.

Having been satisfied of the above, broadly speaking there are two potential scenarios in relation to the debt created by the spending on S's account. Firstly, that this was, in effect, S lending money to Mr J personally. If Mr J had borrowed money in this way from S for personal gain, then he would be liable to repay that debt to the company. And in this situation S can't fairly be considered to have suffered a loss, as it is still owed the money by Mr J as the debtor in these circumstances.

The second potential scenario is that by spending on S's account in this way, S was discharging some debt owed to Mr J, be that a dividend payment, wages or similar. But in this situation, again, S hasn't suffered a loss. The debt has been discharged and Mr J was provided with what he was owed and he paid this to the fraudsters.

Tide do have obligations to be alert to fraud and scams. But setting all those obligations aside, 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 S's account, I'm not persuaded that S 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, it wouldn't be fair and reasonable for me to ask it to do more. This is because any failures that might have occurred didn't cause a loss to S. As such, I'm not intending to direct Tide to do anything further to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J, on behalf of S, to accept or reject my decision before 28 September 2023.

Emly Hanley Hayes
Ombudsman