

The complaint

Mr R is a sole trader, trading as R. He complains that ClearBank Limited (Tide) won't refund the money he lost when he fell victim to a scam.

What happened

Mr R received a call from someone who identified themselves as being from Tide. Unfortunately, they were actually a scammer. They told Mr R his account had been compromised and fraud had been attempted, so he needed to upgrade his account for better security.

Mr R was sent a QR code to scan in his mobile banking app, which granted web access to his account. He also entered an OTP code he was sent – thinking this was part of the process needed to upgrade and move his funds over to the upgraded account.

Shortly after the funds had been moved, Mr R contacted Tide via chat to verify the call. It took around an hour for Tide to reply, at which point it confirmed it hadn't called, and so the scam was revealed. Mr R raised a fraud claim, and subsequently complained when Tide declined this. But Tide maintained it wasn't at fault for the loss, and that Mr R had authorised the payments.

Unhappy with this response, Mr R referred his complaint to our service. Our investigator thought the account activity was unusual, and that Tide had missed an opportunity to prevent the loss, so recommended it refund Mr R.

Tide has appealed the investigator's outcome. In summary, it disputes it ought to have identified the account activity as suspicious. And it said Mr R had missed opportunities to uncover the scam, given he had to scan the QR code multiple times, which Tide had never previously asked him to do. And it had previously verified itself in the app when calling him, which the scammer of course hadn't.

The case has now been passed to me to decide. I've been in touch with both sides directly to clarify a few points ahead of reaching 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.

Having done so, I've decided to uphold it. I'll explain why.

Given the circumstances of this complaint, I've first considered if these payments should be deemed authorised, in line with the Payment Services Regulations 2017 (PSRs). This is relevant as, in broad terms, Mr R would generally be held liable for authorised payments – and Tide would be liable for unauthorised payments.

I've had a look at what Mr R told Tide immediately after the call. He talks about going into the app to confirm the codes, in order to send his money to the upgraded app.

Overall, although Mr R may not have completed all the payment steps directly, it seems he understood the steps he took (such as entering the codes in his banking app) would allow the payments to be taken. So, while he was tricked about the destination or reason for the payments, I think they were still authorised by him.

In line with the PSRs, Tide has a duty to execute authorised payment instructions without undue delay. But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If Tide failed to do so here, and that failure led to a fraudulent loss, it might be fair to hold it liable.

The first scam payment taken was for £15,000. I agree with the investigator this was sufficiently unusual such that Tide ought to have identified this as presenting a fraud or scam risk. It should have looked into the circumstances of the payment further to assess that risk.

I appreciate Mr R's account had previously been used for high value payments. But in considering whether the scam payment looked uncharacteristic, I consider it reasonable to place most weight on the account use in the year prior to the scam. Although Mr R had made a payment of £15,000 over 18 months before the scam, I still think the first scam payment looked at odds with how Mr R *usually* used the account.

Furthermore there are several factors which, when taken together, make this payment appear suspicious. It was going to a new payee; it utilised much more of the available balance than usual (and was promptly followed by a further, high value payment which all but cleared the account), and the amount was still significantly more (by around £5,000) than any payments made in the year prior.

There are, of course, competing duties at play here: banks must strike a balance between processing legitimate, authorised payments promptly – and taking steps to protect customers from fraud. But here, in line with the factors I've highlighted, I do think there was enough going on to warrant further checks.

If Tide had frozen the payment until it had spoken to Mr R, I think the loss could have been prevented. While Tide likely wouldn't have been able to get through to Mr R directly on the phone (as he was speaking to the scammer), it could have texted him or left him a voicemail asking him to call back. Or it could have contacted him via the in-app chat.

If Tide had spoken to Mr R directly, a few questions would have made it clear this was a scam. Tide would have been able to confirm it hadn't contacted Mr R, as indeed it did when he reached out over chat. I therefore think Tide's failure to intervene appropriately led to this loss.

However, while I've concluded Tide is at fault for the loss, I've also considered whether Mr R is partly to blame. Having carefully weighed up the arguments Tide has put forward, along with Mr R's explanation for his actions, I'm not persuaded he is.

There were a number of factors which helped convince Mr R he was genuinely speaking to Tide. The scammer appeared to call from the number shown on his Tide debit card and verified details of recent transactions he had made, without him divulging any personal information. In those circumstances, I consider it reasonable Mr R believed the caller was who they claimed to be. This appears to have been a targeted scam against Tide customers, and the caller had personal/inside knowledge about Mr R and his account.

In those circumstances, I can see why Mr R didn't immediately think the call was suspicious. He didn't foresee the risk as he thought he was dealing with his bank. Furthermore, the cover story he was given – that his account was at risk and fraud was being attempted – created a sense of pressure and urgency. This is a social engineering tactic used to affect the mindset of the victim, and persuade them there is a need to act quickly, without much time to think things through, in order to protect their funds.

While I appreciate Mr R did enter codes, and that there was a scam warning in the OTP message he was sent, he has explained he didn't register the warning, and had been prepared by the scammer to expect the codes. In the heat of the moment and in the wider circumstances I've mentioned above, I don't think his action were unreasonable such that he should be held at fault for his loss.

Although the format of the call was slightly different to one Mr R had received from Tide previously, he has also highlighted the similarities and the information the caller held which convinced him it was genuine. I don't think he is to blame for not realising it was a scam. He did in fact reach out over chat to verify the call, albeit around 10 minutes after making the payments. Still, his actions don't suggest he was acting without regard for risk; it's just that he didn't immediately identify the warning signs.

Overall, to resolve things, I think Tide should reimburse Mr R for the money he lost to the scam, along with interest to compensate him for the loss of use of the funds.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. To put things right, I direct ClearBank Limited to refund Mr R for the scam payments, less any amounts already recovered or refunded. It must pay 8% simple interest per year on this amount from the date of payment to the date of settlement, less any tax lawfully deductible

ClearBank Limited must pay the compensation within 28 days of when we tell it Mr R accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 November 2023.

Rachel Loughlin
Ombudsman