

The complaint

S, a limited company, is unhappy with ClearBank Limited trading as Tide ("Tide") as it won't refund the money it lost as a result of a third-party scam.

S is represented by one of its directors Mr H - who fell victim to the scam – so for ease I have referred to him throughout this decision.

What happened

I'm not going to cover all the points raised in detail. The view of 5 October 2023 covered the timeline of the transactions and the details of Mr H's testimony. But, in summary on 19 December 2022, Mr H was contacted by someone who claimed to be from Tide's fraud department. They called from a number connected with Tide – so Mr H thought it was genuine. They told him that his accounts were at risk, and he needed to move all his money into 'safe' accounts. Mr H transferred a total of £106,080 over four transactions. But when the scammer mentioned it had been given permission from Mr H's other bank to also move his funds from his other bank account - Mr H was concerned and soon after realised he'd been the victim of a scam.

Tide did not uphold the complaint. It said S had initiated five figure payments in the past – so the amounts (whilst higher) weren't unusual based on the account history. Tide said it is a business account – so larger transactions might occur from time to time. It doesn't think a warning or call from Tide would have made a difference as Mr H was persuaded the call was genuine. Mr H received four confirmation of payee warnings. It was able to recover the funds from one of the transfers.

Our investigator upheld the complaint. She felt the account activity was suspicious and unusual. On this basis, she considered Tide should have contacted Mr H for more information and, if it had, the scam would have been unveiled. She also felt that Mr H had acted reasonably in the circumstances so there should be no deduction on the refund Tide should make.

Tide accepted that it should have intervened but not until the second transaction and, as it has already recovered the third transaction, it was only liable for £31,280. Further it felt that Mr H should share in the responsibility for this loss. So, it offered to pay £15,640.

Our investigator's opinion remained the same, so the complaint has been passed to me for a 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 conclusions as the investigator, broadly for the same reasons.

There is no dispute Mr H authorised the transactions on behalf of S, even though Mr H may have been tricked into doing so and was the victim of a scam. I appreciate he didn't intend the money to go to the scammers. But, under the Payment Services Regulations 2017, and the terms and conditions of his account, he is presumed liable for the loss in the first instance. But the matter doesn't end there.

Although Tide is not a signatory to the CRM Code, as a digital business banking provider, taking into account the law, regulators 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 any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- 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 (among 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 it processed a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Tide has accepted that it ought to have intervened from the second transfer. But it considers the first transfer wasn't unusual based on the account history. Specifically, it cites two earlier transactions for £17,966.32 that happened within seconds in the same day (so a total of £35,932.64). I understand the point Tide is making but these in themselves were also usual amounts based on the account history. That said they appear to have been part of what looks like regular payments to the same two established payees (the two directors of S). There is a similar pattern most months albeit the amounts are usually substantially less than this. The transfer for £25,000 was by far the largest single transfer and a new payee – so I think it warranted checking. I think Tide ought to have been concerned about the activity and done more than it did.

Tide said it provided warnings at the time of each transaction but has been unable to provide details of the full log showing this due to the passage of time. In respect of the confirmation of payee (COP) warning - there seems to have been some confusion over whether these amounted to a match or not. Looking at the information sent with the business file - the first payment does suggest a 'co_pmnmach_fail'. The other three transfers appear to have returned an 'error'. But later, Tide confirmed that the confirmation of payee was in fact a match and that Mr H reasonably ought to have queried why he was paying into an account in someone else's name. However, when I look at the transaction history and bank statements – they appear to be going to accounts in Mr H's name or similar to his name. On querying this again with Tide, it told me that the account names were in fact similar to Mr H's and COP came back as a fail because the names did not match.

Based on what Tide says would have been presented to the consumer (“the account you’ve added doesn’t belong to the person you’ve entered”). I’ve considered this warning alongside the one-time passcode message Tide also says would have been given at the time of the transactions. It warned that *Tide will never call you asking to move funds* and goes on to ask whether the consumer has authorised the transfer. But Mr H was authorising the payment. Whilst I appreciate it did warn Tide would never call to move funds – given the sum involved, I don’t think this was tailored enough to safe account scams. I don’t think what it provided went far enough or would have resonated with the consumer - especially in the context of the circumstances of a safe account scam where victims are often coached through the process (and as was the case here as the scammer prepared Mr H for the confirmation of payee mismatch or failure).

I think a warning at this point ought to have covered the key features of a safe account scam which would help bring to life what this type of scam looks and feels like. For example, it could have warned that that scammer can make phone numbers look like the genuine bank’s phone and /or scammers will tell you to ignore these warnings. I think if it had done so, it was more likely to break the spell and the scam likely unveiled. So, I think Tide should refund all the transactions less what has already been recovered.

Should S share in the responsibility for its losses?

I’ve thought about whether S should bear some responsibility for its loss by way of contributory negligence, but I don’t think it should. Mr H fell victim to a sophisticated scam.

From what Mr H has said, the scammer knew personal details about him. The number he was called from was the same as the bank’s genuine number. Therefore, this gave Mr H further reassurance he was speaking with his bank. Overall, he was convinced that he was talking to Tide’s fraud department and taking action to protect the funds in all his accounts. I can understand why the fraud initially went undetected by Mr H.

I do accept Mr H being called by a spoofed number is something that isn’t Tide’s fault. This is not an argument being used against Tide. But the starting position is S should be fully refunded. I would only make a deduction if I thought Mr H, on behalf of S, had acted unreasonably in some way. And I can’t say he has here.

With the benefit of hindsight and with more time to think, there may have been some ‘red flags’ Mr H could’ve picked up on. For example, when Mr H called the number on the back of his card which was the number the scammer was calling from - supposedly from the bank’s fraud department, Mr H acknowledged it appeared to be dedicated to lost or stolen cards and no explicit option for fraud. But the scam took place over a short period of time and in the heat of the moment, in a pressured situation. This is of course a deliberate tactic by the fraudster/s to create fear – in the hope it would disrupt Mr H’s thinking and make him more compliant. On balance, I’m satisfied this happened here to Mr H and that in all the circumstances, his response was not unreasonable. I believe that it was difficult for Mr H to think clearly in the moment particularly given he had little opportunity to make enquiries.

On balance, in the circumstances of the scam – including the real fear that he might lose all S’s money; I don’t think Mr H’s actions were unreasonable.

Putting things right

In order to put things right for S, ClearBank Limited trading as Tide should

Refund S in full less anything already paid or recovered (I understand this amounts to a refund of £56,280)

Because S has been deprived of this money, I consider it fairest that Tide adds 8% simple interest to the above from the date of the transactions to the date of settlement.

If Tide is legally required to deduct tax from the interest it should send S a tax deduction certificate so S can claim it back from HMRC if appropriate.

My final decision

My final decision is that I uphold this complaint and ClearBank Limited trading as Tide should put things right for S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 6 February 2024.

Kathryn Milne
Ombudsman