

## **The complaint**

A limited company, which I'll refer to as E, complains that ClearBank Limited ('Tide') won't reimburse all the money it lost to a scam.

Mrs L, who is a director of E, brings the complaint on E'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.

E holds an account with Tide, with Mrs L as an authorised signatory. On 13 June 2022, Mrs L received a call from someone claiming to be from Tide's fraud team. Unfortunately, and unknown to Mrs W at the time, she was in reality interacting with a scammer.

The caller had been able to make it appear that the call originated from the number on the back of Mrs L's Tide card (a fraud technique known as number spoofing).

The caller said E's account was at risk of fraudulent activity. Believing she was acting on Tide's instructions to protect the account, Mrs L was tricked into authorising a payment which almost entirely cleared the account balance.

The payee name entered was Mrs L's own name (her maiden name) – although it now turns out that the destination account was held in a completely different name. Due to the operation of the scam Mrs L was unaware of this fact at the time.

Mrs L was told the money would appear back in her Tide app within minutes, and she waited on hold. But the caller eventually hung up on her. Suspicious, Mrs L reported what had happened to Tide, and it was confirmed that she'd fallen victim to a scam.

Tide tried to recover E's money, but none remained.

Tide declined to refund E for its losses. It maintained its position when E complained. In its final response, it said Mrs L had authorised the disputed payments and there was nothing more it could have done to have prevented the loss. It explained it was not feasible to stop and check every single payment and it had adequate systems in place.

Our Investigator reviewed everything. He recommended the complaint be upheld. The Investigator highlighted that the payment was for a higher value than had been usual for E's account. He also thought draining the account balance should have stood out.

In all, he thought Tide ought to have been concerned enough to intervene and warn Mrs L this could be a scam before processing the payment. Tide would have been able to uncover the scam if had contacted Mrs L to question her about the reason for the payments. He

noted the sophistication of the scam and considered Mrs L's actions were reasonable in the circumstances.

Tide didn't accept the Investigator's view. It said that its business customers do make bigger payments from time to time and pointed out it has a difficult balance to strike between allowing genuine business activity and detecting potential irregularities. It argued that the payment wasn't a significant increase over prior payments. With this being a business account, this type of payment to a new payee wasn't necessarily unexpected.

In light of this disagreement, I have been asked to reach 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.

Having done so, and despite what Tide has said and the evidence it has provided, I've concluded that Tide should refund the sum E lost to the scam, together with interest to recognise that E has been deprived of that money for a considerable length of time. I'll explain why I've reached that finding.

I'm satisfied that Mrs L authorised this payment on behalf of E, albeit only through a sophisticated deception which led her to believe instead that she was acting to protect these funds. So, although she didn't intend the money to go to the scammer, under the Payment Services Regulations 2017, and the terms and conditions of the account, E is presumed liable for the loss in the first instance. But the matter doesn't end there.

As a matter of good industry practice, I'd expect Tide to be looking out for unusual or out of character payments that might be indicative of the risk of loss through fraud or scam.

Here I am satisfied that this transaction bore the hallmarks of a safe-account scam. The payment instruction was higher than any other payments E had made before. The transfer was initiated from a new device (albeit one authorised by Mrs L's registered device). It largely depleted the available balance, and it appears the account name didn't match the account name that Mrs L had entered (her own maiden name).

I've taken into account Tide's representations on this point, but I think there was enough here to fairly and reasonably have prompted Tide to identify a significant scam or fraud risk. In other words, having considered everything in the round, I find there was enough here that as a matter of good industry practice Tide ought to have identified that this payment instruction was most likely the result of fraud or a scam.

In these circumstances, prior to processing the instruction, I think it fair and reasonable to expect that Tide should have taken steps to contact Mrs L and asked some appropriate questions before processing the payment.

There's nothing to make me think Mrs L would have done other than to answer openly and honestly, thereby bringing the scam to light. Therefore, had Tide done so, I see no reason why it would not have been able to uncover the scam and prevent E's losses.

While I therefore find Tide could have prevented the loss that resulted, I've gone on to consider whether Mrs L's actions or inactions fell below the standard expected of a reasonable person.

Having done so, I'm not persuaded that she should fairly be blamed for falling for the

scammer's story. I can understand why she accepted what she was being told. I consider it critical in this situation to apply appropriate weight to the trust built by the scammer during the course of this scam, and the sophistication of the mechanics of the scam (which I will not document here).

And in particular, I find that a spoofed number can often prove a very powerful deception to convince a customer that the call has originated with the genuine company being impersonated.

All taken into account, in this specific instance I'm satisfied this carried significant weight – adding considerable legitimacy to the false beliefs the scammer was able to engender. At the time Mrs L believed she was speaking to Tide, and I don't think she ought to have realised that she wasn't.

So, all considered, I am not persuaded Mrs L acted unreasonably in the circumstances. Rather, I think she did what a reasonable person would most likely have done in the same situation. As such, I don't think it is fair to conclude that E should share liability with Tide for the loss that resulted.

In addition to the capital sum that was lost here, I have considered the length of time that E has been deprived of these funds. Mrs L has explained the impact this had on the business and how the funds would have been used for specific purposes had they not been lost.

Of course, I cannot know the precise financial impact on E. In the circumstances, I consider an award of interest at a rate of 8% simple per annum would be fair and reasonable to reflect the time E has been deprived of this money. I consider that to be fair in all the circumstances here taking into account the impact on E of the loss of this money and the considerable time this matter has taken.

### **Putting things right**

For the reasons given above, I find that Clearbank Limited (Tide) should:

- Pay E the sum of £10,005.81, less any sums that have already been reimbursed or returned to E, that being the amount lost to this scam; and,
- Pay interest on that amount, calculated at 8% simple per year (less any tax properly deductible\*) from the date of the payment until the date of settlement.

*\* If ClearBank Limited considers it is required by HM Revenue & Customs to deduct income tax from the interest award, it should tell E how much it's taken off.*

### **My final decision**

For the reasons given above, I uphold E's complaint about Clearbank Limited.

Clearbank Limited should settle the matter as set out above within 28 days of receiving notification of E's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 24 November 2023.

Stephen Dickie  
**Ombudsman**