

Complaint

B, a limited company, complains that ClearBank Limited (trading as Tide) didn't reimburse it after it fell victim to a scam. B is represented by its director, Miss R and so I'll generally refer to Miss R in the text of this decision.

Background

In November 2021, B fell victim to a scam. B is a beauty salon operated by Miss R. However, the scam in question involved B operating as an intermediary between a wholesaler of haircare products and an end customer in another part of the UK. She agreed to purchase a large volume of goods from a supplier she'd made contact with on social media. She separately arranged a contract with a purchaser of those same goods. When placing her order with the supplier, she asked that the goods be delivered directly to the address of the purchaser. She transferred £30,000 from B's account with Tide to the supplier.

The goods were sold on the basis that no payment would be due until they'd been inspected and the purchaser was satisfied with their quality. The purchaser of the goods in this case told Miss R that they were satisfied with the quality of goods supplied and, as a consequence, she paid the cost of the goods to the supplier. It now appears that no goods were ever sent. The email sent to Miss R telling her otherwise was part of the scam and designed to persuade her to part with her money.

On 19 November 2021, Miss R messaged Tide to say that she'd been scammed. She said that she wasn't sure exactly what the situation was but that it was suspicious because she'd never met the supplier or the customer. She asked Tide whether she should report what had happened to the police. An employee of Tide responded and said they'd investigate what had happened. They also told Miss R that she was free to report the incident to Action Fraud. Around twenty minutes later, she messaged again and withdrew her previous allegation. She said that she'd checked everything with her supplier and was happy it wasn't a scam. Miss R went on to set up an ongoing arrangement under which monthly shipments of this haircare product would be sent to the customer by the supplier. She paid for the services of a solicitor to draw up two contracts to cover the agreements she'd made with each.

Once she realised that she'd fallen victim to a scam, she notified Tide via her representatives. Tide didn't agree to refund the loss. It said that it had processed the payment B had asked it to make, which it was expected to do under the relevant legislation. It also said that B should've carried out greater due diligence before agreeing to make the payment.

Miss R wasn't happy with that response and so the complaint was referred to this service. It was looked at by an Investigator who didn't uphold it. The Investigator said that, while Tide ought to have intervened and questioned the payment, she wasn't persuaded it would've been able to uncover or prevent the scam. Miss R disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. It's accepted that B authorised this payment and so it is presumed liable at first instance. However, that isn't the end of the story. Good industry practice required that Tide be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

The Investigator concluded that this payment was sufficiently large and out of character that Tide ought to have made enquiries before processing it. I agree with that conclusion – it was significantly larger than other payments made from the same account and was being made to a new payee. Tide should've paused the payment and spoken to Miss R about it before deciding whether or not to process it.

However, I can't ask it to refund the payment unless I can reasonably conclude that its error was the cause of the loss. I have to take into account the law on this point. That means I need to be able to affirmatively answer the following question – would the damage or loss which B has complained about have occurred “but for” the failings of Tide? In other words, is there sufficiently strong evidence to show that it's more likely than not that, “but for” the failing on the part of Tide, the relevant loss would not have occurred? If the loss would have occurred in any event, the conduct of the business is not a “but for” cause.

To reach a conclusion on this point, I need to consider what would have happened if Tide had handled things differently. It ought to have contacted Miss R and asked her about the payment. It should also have given her general guidance about the prevalence and risk of fraud and scams. Unfortunately, I'm not persuaded that any intervention by Tide would've prevented the scam from taking place. Miss R had her suspicions about the arrangement but an interaction with the supplier put her mind at rest. If Tide had blocked the £30,000 payment and spoken to Miss R, it would at best have led to her making those enquiries and obtained reassurance sooner than she did. It's noteworthy that she was sufficiently reassured that she made another payment to the supplier from an account she holds with a different bank.

She'd also have been able to explain that her agreement with the supplier meant that no payment was due until the goods had been received, inspected and found to be of satisfactory quality. That's atypical in a scam of this kind. Of course, that reassurance was of no practical value given that the ultimate recipient of the goods appears to have been in on the scam. But I wouldn't expect the conversation between Miss R and Tide to be of such depth that it would lead to uncovering that. I don't think that would be a realistic expectation in a brief telephone conversation.

I accept that Miss R found the supplier on social media and that the typical ‘goods not received’ scam is common on the particular platform she used. But I don't think this looked like a typical version of those scams. And while I would expect an employee of Tide to tell her that she should take extra care when dealing with this contact because she found them on social media, I don't think that alone would be enough for it to say that this was most likely a scam. I think it could only have encouraged her to carry out further checks which, for the reasons I've already explained, would merely have persuaded her that the arrangement was a legitimate one.

For completeness, I've also looked at whether Tide did everything it needed to do once it became aware that B had fallen victim to a scam. I can see that it promptly made contact with the receiving bank but that no funds remained. Unfortunately, due to the way the scam played out, Miss R notified Tide several months after the scam had taken place and so it was highly unlikely any funds would be recovered.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 21 December 2023.

James Kimmitt
Ombudsman