

## The complaint

T, a limited company, has complained Tide Platform Ltd, trading as Tide, won't refund them for transactions they didn't authorise.

## What happened

Mr B is the director of T and is representing them in this complaint. Mr B's sister, Ms S, works for T and manages the accounts. Her phone is registered with Tide as the authorised person for the account. The Tide app also works on her phone. Mr B also has the Tide app on his phone and the app works to his facial ID.

In February Ms S was working at home, as she'd not been well, and received a call from someone pretending they represented Tide. They asked whether she'd been aware of a letter advising her that the app was out of use whilst being updated. This fitted with Ms S's own experience as she'd been logged out of the app and couldn't log back in. During this call Ms S was sent a message from Tide providing her with an Apple Pay *"set up one-time verification code"*. Ms S can't recall completely what she did with this code.

The following day after re-setting up the Tide app on her phone, Ms S alerted T to fraudulent transactions. More than £22,395 was spent on the Tide card linked to T's Tide account. Mr B was able to report these to Tide. Tide didn't take steps to note the card as compromised so didn't delink this from Apple Pay. Further disputed transactions were also made which Tide subsequently accepted was down to their error.

Tide wouldn't refund T for the first set of disputed transactions. They believed Ms S was an unauthorised user on the app and had given away the Apple Pay verification code which enabled the card transactions to be made. They didn't believe they were required to refund T.

Mr B brought T's complaint to the ombudsman service.

Our investigator reviewed the evidence provided by both T and Tide. She believed the card transactions had been authorised and therefore T should remain liable for them. She also noted that Tide had made an error which enabled further fraud transactions (£6,184.99) being undertaken but felt that £75 offered was fair in the circumstances.

Still unhappy with this outcome, Mr B asked for T's complaint to be considered by an ombudsman.

I completed a provisional decision on 16 December 2023. I believed there wasn't sufficient evidence to show these had been authorised by T. However I believed because of the apparent authority Mr B had granted Ms S, half of T's losses should be refunded. I also told Tide I would be asking them to pay additional compensation of £425.

On behalf of T, Mr B accepted this provisional outcome.

Tide didn't. They emphasised their point that their terms and conditions didn't permit Ms S to

access and use B's account and felt these outweighed the other considerations I'd made.

### **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 outcome as I did in my provisional decision. What follows explains my thinking.

I have read and considered Tide's detailed response to my provisional decision. I can see they believe my arguments were contradictory, but I can clarify that the PSRs and what they state about apparent authority outweigh Tide's terms and conditions. I am satisfied the points they make are covered below and those that aren't covered in detail have been considered fully and taken into account as I made my final decision.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to T's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves.

To help me come to a decision, I've reviewed the evidence Tide provided as well as what Mr B has told us. I've also taken into account our investigator's detailed view dated 7 September 2023. I don't feel the need to repeat some of the facts included there as all parties will be aware of these. I can confirm that I have reviewed Tide's terms and conditions for the use of their card, particularly sections 10.6 to 10.13.

There's no dispute that the transactions totalling £22,395.57 were made using T's Tide card details enabled on Apple Pay. I believe these transactions were carried out as Ms S provided the verification code to the person on the phone pretending to be Tide. I accept what Mr B has told us that Ms S can't recall exactly what happened. She was suffering a migraine at the time, and I appreciate how debilitating these can be.

However I think it's most likely Ms S provided the person on the phone with the code. She wasn't feeling well, believed she was talking to Tide at the time and had been told that the app was unavailable which she knew was the case from her own experience. So I don't believe it's too surprising that Ms S gave away the code perhaps as a way of verifying herself to Tide. I need to be mindful of the circumstances of Ms S giving away the code – despite warnings Tide may have issued at the time – and I'm satisfied she behaved in a reasonable manner taking into account she was a victim of a scam. She'd have been aware that her phone number was registered with Tide for the operation of T's business bank account but was also aware that she and Mr B had come to a mutually reasonable way of managing T's account by both accessing the app, whilst only Mr B was able to provide the proper ID for using the app.

The provision of the code to set up the card on Apple Pay didn't in itself provide authorisation for the individual Apple Pay transactions although I agree this enabled what subsequently happened. However authorisation, as defined within the PSRs is very specific

as I confirm below, so I am therefore satisfied that I can conclude the Apple Pay transactions made with the Tide card weren't authorised. There seems to be no dispute these were carried out by the fraudulent third party.

I do need to take into account the terms and conditions that relate to the use of the Tide card and business account. Whilst Tide believes they're not liable because T gave away the code to an unauthorised user – essentially Ms S – I don't agree.

Instead I believe T gave Ms S apparent authority under the PSRs to use the card related to the account.

The PSRs say that someone acting as an agent on behalf of T can be treated as acting with apparent authority when making transactions on their account.

Authority consists of two elements. The transactions must be authenticated, and T needs to have consented to the payments being made.

I'm satisfied from reviewing the history of account use that T consented to Ms S using the card and authorising transactions. I also believe that Ms S must have given away the verification code as I explain above. However I don't believe Ms S consented to the individual disputed transactions which then took place.

Based on apparent authority, I'm satisfied T must bear some liability for what happened. As I've confirmed, I don't believe the individual card transactions were authorised by T, or Ms S, but Ms S's involvement means that I believe it's fair that T bear the costs of 50% of the disputed transactions.

### **Putting things right**

This means I will be asking Tide to refund £11,197.79 to T.

I've also looked at what happened after Mr B reported the disputed transactions and compromise that had taken place on T's Tide card. It's clear that Tide made an error which led to a considerable further number of disputed transactions.

As this complaint is in T's name, I'm unable to consider any individual distress or shock that Mr B and Ms S undoubtedly suffered. However I believe this latter event may have caused inconvenience to T whilst the business was trying to manage their cash flow after losing more than £22,000. Having considered this, I believe Tide should pay T a further £425 (making this £500 in total) in compensation for this inconvenience.

### **My final decision**

For the reasons given, my final decision is to instruct Tide Platform Limited to:

- Refund £11,197.79 to T;
- Add 8% simple interest to this amount from 23 February 2023 to the date of settlement; and
- Pay T £500 in total compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 11 January 2024.

Sandra Quinn  
**Ombudsman**