

## **The complaint**

B, 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 falling victim to a scam.

Mr T, as the director of B, brought the complaint to our service with the help of a professional representative. As Mr T fell victim to the scam, for ease I have referred to him throughout this decision.

## **What happened**

The circumstances which led to this complaint are well-known to both parties, so I won't repeat them in detail here. But, in summary, I understand them to be as follows.

On 12 January 2023, Mr T received a message which appeared in a chain of other text messages he'd received from Tide (known as "smishing"), which provided a one-time passcode ("OTP") for an attempted transaction which he hadn't made.

Mr T contacted the number given in the message, as it instructed him to do if the transaction wasn't one he'd made. Unbeknown to Mr T at the time, he was in fact speaking with a fraudster. Mr T says he was asked security questions which were similar to those he is usually asked to verify himself to the banks. He explained he was told his account was at risk and he'd need to move his funds to a new account. Mr T followed the fraudster's instructions. Mr T adds that the new account details were sent to him within the thread of messages from Tide.

Mr T told us he transferred savings into the account and then proceeded to make the payments as instructed. Mr T says he initially made a payment of £1 and then a further payment of £8,882.92 to the new account details provided.

Mr T explained he was then placed on hold and the call was subsequently disconnected. He called the number again and says he reached a different person to the one he initially spoke to, and he was again asked security details. Mr T said he initially felt reassured by this. It suggested a typical office environment, but he added that he grew suspicious.

Mr T says he attempted to contact Tide by phone but when it wasn't possible, he used the online chat function, and it was at this point that he realised he'd fallen victim to a scam. Tide didn't agree to reimburse Mr T. It said once notified of the scam, it had done everything it could do to recover Mr T's money – unfortunately only £8.33 was recovered from the receiving account. Mr T was unhappy and so he raised a complaint.

Tide did not uphold the complaint. In its final response letter of 9 February 2023, it said it isn't subscribed to the voluntary Contingent Reimbursement Model (CRM) Code. It recognised Mr T had fallen victim to a "smishing scam" whereby scammers mask the number they're using as the one at the back of the Tide card and why the messages show on the text message thread with Tide. Tide added that Mr T received a Confirmation of Payee (CoP) warning when the new payee was added and that a message with a OTP was also sent to authorise the payee which provided a warning. It considered these should have

constituted enough warnings for Mr T to have suspicions raised - as the scam was exactly what it was being warned about. Tide also didn't think it had missed any opportunities to intervene. Further, it says it attempted to recover the money from the receiving bank (the account the funds were sent to) in a reasonable time of being notified of the scam, but only £8.33 was recoverable.

Dissatisfied, Mr T brought his complaint to our service. One of our Investigators looked into the matter and upheld the complaint. She felt the £8,882.92 payment Mr T made was suspicious compared to previous account activity and, on this basis, Tide should have contacted Mr T for more information. She felt, if it had, the scam would have unravelled. She noted the sophistication of the scam and considered Mr T's actions were reasonable in the circumstances. So, she recommended Tide reimburse the remainder of the payment along with 8% simple interest.

Tide didn't fully agree. In its response it said while it concurs that it should have stopped the payment, there were three transactions from 2020 which it says were higher than the scam payment that it felt should be taken into consideration.

Tide added that the action taken by Mr T prior to the payment also needed to be considered – in particular, it said it displayed a relevant warning and the CoP check showed the account name didn't match. With this in mind, Tide felt liability should be shared and agreed to reimburse 50% of the payment.

Mr T didn't agree with Tide's offer and maintained he should be fully reimbursed for his loss.

As an agreement couldn't be reached the case 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

The starting position under the relevant regulations is that B is generally liable for authorised transactions. It's common ground that these payments were authorised and so B is presumed liable at first instance. However, good industry practice required that Tide be on the lookout for account activity that was out of character or unusual to the extent that it might be indicative of a fraud risk. On identifying such activity, I'd expect it to take reasonable steps to protect its customer from that risk.

The Investigator found that the payment of £8,882.92 ought to have caused Tide concern and I agree with that conclusion. Looking at the previous account activity in the year prior to the scam I consider the payment Mr T made here to be significantly higher in value than previous payments. I accept there were higher payments in 2020, but that isn't indicative of typical account activity in 2023. It follows that I'm persuaded Tide ought to have identified a risk and that it ought fairly and reasonably to have made enquiries with Mr T to ensure that B wasn't at risk of fraud. Tide has accepted this point.

Had it done so, I'm satisfied the scam likely would've unravelled. I say this because Mr T doesn't appear to have been prepared by the fraudster to respond to any such challenge in a specific way. If Tide asked Mr T why he was making the payment, there is no reason for me to think he wouldn't have answered honestly. With this in mind, I think it is more likely than not that the scam would've quickly come to light.

Tide has raised that Mr T received a CoP warning that said the account details didn't match and it also pointed out that the wording of the one-time passcode text sent to Mr T made it clear that Tide would never call asking for funds to be moved. It highlights the warning holds significant relevance here and that Mr T should share some responsibility for the loss. I've thought carefully about this and whether I think Mr T's actions or inactions fell below the standard expected of a reasonable person.

Based on everything I've seen and been told, I'm not persuaded Mr T ought fairly and reasonably be held liable for falling victim to this scam. I say this because, Mr T received a message within a thread of messages that included genuine ones from Tide. Tide itself has said Mr T fell victim to a "smishing scam" whereby scammers disguise the number as a legitimate one and insert the messages in an existing thread. I find this is a powerful deception to convince a customer that what they've received originated from the genuine company being impersonated.

Further, while I note Tide's reference to the wording within the one-time passcode text about Tide never calling to ask for funds to be moved, I'm mindful that this is not what happened here. Mr T received a message providing an OTP code for an attempted transaction which he hadn't made. Following this, Mr T called the number provided and spoke with whom he believed to be the genuine Tide – he hadn't received a call from anyone purporting to be Tide. So, I don't think this would have fully resonated with Mr T at the time. Mr T also referred to the fraudster creating a sense of urgency and the need to protect his money. In the circumstances described in this case, I find what Mr T has said to be plausible.

I've also taken into account that Mr T received the new account details within the same thread of messages – again amongst genuine messages from Tide. Mr T says this reassured him that he'd received the message from Tide, and it was safe. He added that, when he was directed to set up the new account the fraudster said that as it was B's account, he could choose what it was called. So, Mr T called it B and when making the payment also put B as the reference.

I accept that in the cold light of day, Mr T might be expected to react differently. But in that specific moment, and in that false environment the fraudster had created, I don't find it unreasonable that Tide's wording in the text message or the CoP didn't have the same impact on him - when set against what he'd received in the text message thread and was being told over the phone by someone he believed to be from Tide's own fraud team.

All things considered; I don't find I can fairly say Mr T acted unreasonably. I think he has done what a reasonable person would have done in the same situation. As such, I don't think it is fair to conclude that B should share liability with Tide for the loss that resulted.

I've also considered whether Tide did everything it needed to do once it became aware of the scam. I've seen that Tide contacted the bank that operated the fraudster's account in an attempt to recover B's money – but unfortunately, only £8.33 was recovered.

### **Putting things right**

I require ClearBank Limited trading as Tide to:

- Reimburse Mr T the scam payment of £8,882.92 (minus the amount already recovered and paid).
- It should also add 8% simple interest per year to that sum calculated from the date of the payment to the date the settlement is paid.

*\* If ClearBank Limited considers it is required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr T how much it's taken off. It should also provide a tax deduction certificate if Mr T asks for one, so the tax can be reclaimed from HM Revenue & Customs where appropriate.*

### **My final decision**

For the reasons given above, I uphold this complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 29 December 2023.

Staci Rowland  
**Ombudsman**