

## **The complaint**

P, a limited company, complains that ClearBank Limited trading as (“Tide”) won’t refund a number of payments lost to a scam. P is represented by Mr S who is the sole Director of P.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I’ll only provide a brief overview of some of the key events here.

P’s Director, Mr S, made a payment to what he thought was a well-known online travel provider but turned out to be a scammer. Instead of one payment being taken out of P’s account 5 payments were made instead.

Mr S realised that something had gone wrong, and he contacted Tide to prevent the payments.

Tide declined to offer Mr S a refund of the payments that left P’s account. Mr S complained and the matter was referred to our service.

One of our Investigators looked into things, but they didn’t recommend that the complaint should be upheld. They said they weren’t persuaded that P had suffered a loss in the circumstances set out by Mr S.

Mr S, on behalf of P, disagreed and asked for an Ombudsman to make a decision. So, the complaint was passed to me.

## **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.

This decision is solely in relation to the payments that left P’s business account. In these circumstances, P is the eligible complainant. As the Director of P, Mr S can represent P, but personally he is considered a separate legal entity, distinct from P.

Mr S says he did not authorise all the transactions in question, he says he only agreed to the first three and is unsure how the remaining two took place. I have considered this but given it seems that all of the transactions were challenged by Tide and a onetime passcode was provided for each payment I think, albeit on balance, that Mr S did authorise the transactions. Though I am satisfied he was tricked into doing this by the scammer.

When asked whether the payments that left P’s business account were in relation to a personal matter or on behalf of P, Mr S confirmed that the payments had been made in relation a personal matter.

Given this, there are two potential scenarios in relation to the debt created by the spending on P's account. Firstly, this could be P lending money to Mr S personally – in which case Mr S would be liable to repay that debt to P. And P couldn't fairly be considered to have suffered a loss, as it is still owed the money by Mr S.

Secondly, by spending the money in P's account in this way, P could have been paying off a debt it owed to Mr S. But if this were the case, P wouldn't have suffered a loss as its debt to Mr S would have been repaid. Mr S would then have been deemed to have lost the money on his own behalf.

So however, the payments made out of P's account are treated, I don't think P has suffered a loss. And so, even if Tide had made an error or would otherwise be required to refund the payments, I don't think it would be fair and reasonable to require it to do so here because I don't think P has suffered a loss.

Mr S has provided a number of reasons as to why he does not think that Tide acted correctly such as he believes it should have frozen the transactions and that Tide may be part of the scam. I note how strongly Mr S feels about this, and I am sorry that he appears to be the victim of a cruel scam for a considerable amount of money. I also note why Mr S thinks that Tide did not act correctly. In this instance this account is P's account not his, and to reiterate what I've said above, P and Mr S are separate legal entities. So, even though Mr S is the sole director of P, I can't ask Tide to refund money to P that P has not lost, regardless of what Mr S thinks Tide should have done during this matter.

I also can't award compensation for distress and inconvenience for Tide's handling of this matter as P, which is a company, can't feel distress and any inconvenience happened to Mr S not P and P not Mr S is the eligible complainant in this instance.

So, it follows that I don't uphold this complaint.

### **My final decision**

For the reasons outlined above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 29 March 2024.

Charlie Newton  
**Ombudsman**