

The complaint

B, a limited company, has complained about the actions of Clearbank Limited trading as Tide (Tide) after it was the victim of an authorised push payment (APP) scam.

What happened

Mr P, a director of B, fell victim to the scam so for ease I have referred to him throughout this decision.

The view of 8 December 2023 outlined the detail of the transactions and Mr P's testimony - so I won't repeat it all here. But briefly, Mr P fell victim to an invoice interception scam. In February 2023, B received a payment of £55,110.20 from M - a legitimate organisation Mr P had transacted with before. However, this payment was made in error and was a duplicate of a payment which had already been paid.

In April 2023, M informed Mr P about the duplicate payment and asked for it to be returned. However, before the money was sent back, someone impersonating M got in touch with Mr P providing new bank details to send the payment to. Believing this to be legitimate, Mr P made the payment of £55,110.20 to the scammer on 1 June 2023.

On 19 June Mr P made another payment under similar circumstances to another organisation he regularly dealt with – I will refer to as T. Again, an email was intercepted and mimicked the real T asking for a payment of £8,000 to be paid to a new bank account. The next day T confirmed they hadn't received the payment, nor had they changed their bank details. Mr P reported this to Tide on 20 June 2023.

It wasn't until around 29 June 2023 that Mr P became aware that the real M hadn't received their funds either. He then reported the matter to Tide.

Tide did not uphold the complaint. It said, based on the transaction history, the payments weren't unusual, and it couldn't reasonably be expected to have stopped them. Tide said it had contacted the receiving banks but little to no funds remained. Tide did say it should've got in touch with the receiving bank of the £55,110.20 payment when it was first reported. But bearing in mind the transaction had happened almost a month before, it felt it was unlikely any funds would have remained. However, it offered £150 compensation for this and also offered £100 compensation for the unsympathetic service it provided.

Our investigator did not uphold the complaint. He felt the activity wasn't unusual based on the account history and even if Tide had intervened it felt it would have looked as if Mr P was paying one of his regular legitimate payees. Mr P didn't agree.

As the case could not be resolved informally, it's 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.

Having done so, I've reached the same conclusions as the investigator, broadly for the same reasons.

I'm sorry to hear Mr P was the victim of a scam and lost so much money through no fault of his own. I can understand why he wants to do all he can to recover the money he has lost. But that alone doesn't mean that Tide must reimburse him. It's important to emphasise that I'm only considering whether Tide, which had no involvement in the scam itself, should be held responsible for what happened.

There is no dispute Mr P authorised the transactions on behalf of B, even though Mr P may have been tricked into doing so and was the victim of a scam. I appreciate he didn't intend the money to go to the scammers. But, under the Payment Services Regulations 2017, and the terms and conditions of the account, B is presumed liable for the loss in the first instance. But the matter doesn't end there.

Although Tide is not a signatory to the CRM Code, as a digital business banking provider, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Tide should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before it processed a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case I don't think Tide ought to be held liable for not stopping the transactions. I'll explain why.

There had been other large payments out of the account in recent times – such as transactions for £50,000 and £65,000 in December 2022. There were also other large regular, albeit smaller payments (between £10,000 and £23,000) frequently made from the account. So I don't think the £55,110.20 or £8,000 payments would have necessarily looked unusual or suspicious.

When considering what payments should be considered significantly out of character, it's often a finely balanced matter. Firms can't be involved in every transaction, and I am mindful that there is a difficult balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. The transactions were completed online and there was no conversation between Tide and Mr P about them. To Tide, they appeared as genuinely authorised payments.

So I don't think the bank missed a clear opportunity to identify a potential scam risk. All of this means that, without any interaction between Mr P and Tide before the payments were made, I can't see any reason why Tide would have suspected Mr P was falling victim to a scam and I don't think it had any reason to intervene and question the payments before they were made.

Recovery of funds

I've also thought about whether Tide could have done any more to recover B's funds from the recipient bank accounts once it was put on notice that Mr P was the victim of a scam. The first transaction was made on 1 June 2022 and wasn't reported until 29 June 2022. But the funds left B's account with Tide immediately and I've seen the evidence that all the funds were removed from the beneficiary accounts well before Mr P contacted Tide to let them know he'd been the victim of a scam. So even if there was a delay in Tide reaching out to the beneficiary bank – it wouldn't have made a difference here as the funds were removed almost immediately and well before Mr P realised, he'd been the victim of a scam. Nevertheless, Tide offered £150 for its delay in reaching out to the beneficiary bank here.

The second payment was made on 19 June 2022. Mr P did contact Tide the following day. Tide reached out to the beneficiary bank the same day as Mr P reported the scam. But I have seen the information from the beneficiary account that indicates all but just over £500 of B's funds left the account on 19 June 2022 - so the day before Mr P contacted Tide. I understand remaining funds have now been returned to B. But if they haven't then Tide should return this sum to B.

Having carefully considered everything, there is not enough here for me to think Tide should have suspected Mr P might be the victim of a potential scam at the time he made the payments. And I don't think he's suffered any further losses as a result of any delay by Tide in trying to attempt to recover B's funds.

Compensation

Finally, I have considered whether Tide's should pay B compensation. I'm very sorry to hear of the negative effects this scam has had on Mr P and B. It is clear, from what Mr P has said, that B is in financial difficulties and struggling to survive as a result of the scam.

It is true that a business cannot suffer distress and, although I appreciate Mr P has suffered as a result, I can't make an award for Mr P's own distress. That said I do acknowledge that a business can suffer inconvenience and reputational damage.

But ultimately, B's loss was caused by the cruel and callous acts of a fraudster and not (in accordance with my findings above) because of any failings by Tide. I appreciate Tide failed to reach out earlier to one of the beneficiary banks, but its actions did not make a difference as the money had already left the recipient account. That said Tide has offered to pay B £250 in total towards this and its lack of customer service. I accept B has been inconvenienced as a result of Tide's actions. Tide has confirmed its offer is still open. I think this is a fair and reasonable offer in the circumstances.

Putting things right

Clearbank Limited trading as Tide should put things right for B by

- Paying compensation of £250
- Returning the recovered funds if it hasn't already done so

My final decision

My final decision is that I uphold this complaint in part and Clearbank Limited trading as Tide should put things right for B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 8 March 2024.

Kathryn Milne
Ombudsman