

The complaint

P says Tide Platform Limited (“Tide”) refuses to refund it for transactions on it’s account it says were unauthorised.

What happened

The facts of this case are well known to both parties, so I won’t repeat them in detail here.

In summary P says it’s card was retained at an ATM on 13 November 2023, and following this several transaction were made on the account which were fraudulent. P says it contacted Tide as soon as it could after the incident, but in this time £4,678,10 worth of fraudulent transactions were already made.

Tide says it hasn’t investigated this claim thoroughly as the transaction were made via chip and PIN. But Tide seems to accept that the transactions were carried out by someone else who took the card from the ATM - and had either seen P enter the PIN or had a device on the ATM which read the PIN. So, Tide decided to offer P a 50% refund of the transactions made, as it felt P was jointly liable.

Our investigator considered the complaint and decided to uphold it. Considering all the evidence supplied by both parties she felt Tide had not done enough to persuade her that these transactions were authorised. Tide disagreed so the complaint 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.

A consumer should only be responsible for transactions made from their account that they’ve authorised themselves unless they have been grossly negligent in some way. Those rules are set out in the Payment Service Regulations 2017. P has said it didn’t carry out the transactions in dispute. Tide has admitted that it thinks the transactions were made by someone else, but it has held P partly liable. So, I then have to give my view on whether I think P did authorise the transactions or not, and whether I think any of its actions amounted to gross negligence.

Tide has provided evidence that the transactions in dispute were all carried out using P’s genuine card and PIN. P has said its card was not returned from an ATM and it was worried about the noises it was making. P has said there is CCTV evidence from the ATM of someone else removing the card from the machine. However, neither party have supplied me with this footage to consider. Tide admits that it is possible that the card could’ve been taken from the ATM. Tide has also suggested that it could be possible that someone else could’ve seen P entering its PIN at the ATM or there could’ve been a device on the ATM which read the PIN. Tide admits that both these scenarios are possible.

In addition, the transactions in dispute are suggestive of fraud. I say this because there were

failed transactions after the card was blocked – suggesting the user was unaware the card was blocked. As well as declined cash withdrawals due to the daily limit being reached – suggesting the user was unaware of the card and account limits. And a quick succession on high value transactions – suggesting the user was attempting to extract as much money from the account as quickly as possible. These are all indications that the card may have been used by a fraudster.

So, considering all the evidence I've seen I do not think these transactions were authorised by P. I will now also consider whether P has been grossly negligent in its actions.

A customer has a responsibility to protect their account. That includes keeping cards safe and things like PIN and online banking details secret. If they don't, they might be responsible for any spending on their account. So, I need to consider whether P has been 'grossly negligent' and failed to keep its account safe or perhaps whether it 'failed with intent' to do so.

There isn't an exact definition for 'gross negligence'. But we believe it to be beyond ordinary carelessness. There needs to be a serious disregard or indifference to an obvious risk and the bar is a high one. But on considered the evidence I don't think P has been grossly negligent, and I'll explain why.

Upon realising that the card was not coming out P says it reported this to the ATM provider, the police and Tide as soon as it could. P says it took 45 minutes to report this, and this was as quickly as it could do so from the app. Tide says P could've called them straight away to report this. I agree that P could've called sooner, rather than waiting to be able to report this on the app, however I don't think 45 minutes after the event is an unreasonable amount of time. I understand that P waited at the cash machine for some time to see if the card would come out, and also called the ATM provider for help. So, I don't think this amounts to more gross negligence as defined above.

I've also considered whether P was grossly negligent in allowing its details to be compromised in any way. P say the PIN was not written down anywhere and it has not said that it saw anyone watching the PIN being entered. This doesn't mean that I don't think anyone watched the PIN being entered, just that P was not aware of this to take any other precautions. Tide have accepted the possibility that there could've been a device on the ATM which read the PIN but I've not seen any evidence to show the ATM was so obviously tampered with that P might have been alerted that there was something suspicious. So overall, I don't think P was grossly negligent in any way.

Overall, I have not been provided with enough evidence to conclude that these transactions were authorised or that P was grossly negligent. Therefore, I am upholding this complaint.

Putting things right

Tide should refund P all the transactions in dispute and any associated fees, I understand this amount to be £4,687.10. Tide should also pay 8% simple interest on this amount from the date of the transactions till the date it is paid.

My final decision

I am upholding this complaint and Tide Platform Limited should compensate P as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 1 April 2024.

Sienna Mahboobani
Ombudsman