

The complaint

A company, which I'll refer to as M, complains that ClearBank Limited (Tide) won't refund the money that was lost through an Authorised Push Payment ("APP") scam. Mrs A, who is a director of M, brings the complaint on M's behalf.

What happened

I issued my provisional decision on this complaint on 22 February 2024. The background and circumstances of the case and the reasons why I was minded to uphold it were set out in that decision. I have reproduced the provisional decision in italics below;

Mrs A has explained that in October 2022 she was persuaded by fraudsters that her banking was compromised, and they tricked her into making a number of payments from M's account with Tide in order to protect the money and keep it safe.

A few days before, Mrs A had reported to a different bank, where she holds a separate account (which I'll refer to as Bank B), that she'd received a spoofed text regarding an energy rebate and had provided some of her details as a result. Bank B told her that she could expect a call from it. So it didn't come as a surprise to her when she then received a call, from what appeared to be the bank's genuine number – but unknown to her at the time, this call was from fraudsters rather than from her genuine bank.

Mrs A has said the fraudsters installed remote access software and said that a new account had to be opened and that her banks were working together to secure her accounts. Mrs A has said the transactions that left the account were generated by the fraudsters through remote access, but she recalls receiving the One Time Passcodes (OTP's), which enabled the payments to be progressed.

A list of the transactions that are relevant to this complaint are listed below;

<i>Date</i>	<i>Time</i>	<i>Paid In</i>	<i>Paid Out</i>		<i>Refunded / Recovered</i>
<i>3/10/22</i>	<i>12:18</i>		<i>£29,500</i>	<i>To Payee 1</i>	
<i>3/10/22</i>	<i>12:34</i>		<i>£25,000</i>	<i>To Payee 2</i>	<i>£20,077 recovered</i>
<i>3/10/22</i>	<i>13:15</i>		<i>£4,700</i>	<i>To Payee 3</i>	
<i>3/10/22</i>	<i>13:28</i>		<i>£4,000</i>	<i>To Payee 3</i>	<i>£13.10 recovered</i>
<i>3/10/22</i>	<i>14:01</i>	<i>£5,000</i>		<i>Transfer from Bank B</i>	
<i>3/10/22</i>	<i>14:04</i>	<i>£4,000</i>			
<i>3/10/22</i>	<i>14:16</i>		<i>£9,000</i>	<i>To Payee 3</i>	<i>Refunded by Bank B</i>
<i>3/10/22</i>	<i>14:37</i>	<i>£3,950</i>		<i>Transfer from Bank B</i>	
<i>3/10/22</i>	<i>14:41</i>	<i>£3,750</i>		<i>Transfer from Bank B</i>	
<i>3/10/22</i>	<i>14:42</i>		<i>£7,700</i>		<i>Refunded by Bank B</i>
<i>3/10/22</i>					
<i>Total</i>			<i>£79,900</i>		

Overall, £79,900 was transferred from M's account. Of that, £16,700 was refunded by Bank B and a total of £20,090.10 was recovered by Tide, from the beneficiary banks. Leaving M with an outstanding loss of £43,109.90.

Realising she'd been the victim of a scam, Mrs A raised the matter with Tide. It looked into M's complaint but didn't uphold it. In summary it said that everything that was required of it had been done accordingly. It added that as Mrs A had willingly installed remote access software, it didn't believe Tide had any chances to intervene. However, without any admission of liability, Tide did offer to refund Mrs A £7,900 as a gesture of goodwill.

Mrs A didn't accept Tide's offer and, unhappy with its response, she brought the complaint to this service. One of our Investigator's looked into it and thought the complaint should be upheld in part. In summary, it was our Investigator's view that Tide should've been concerned and intervened at the point of the second payment (for £25,000). Our Investigator thought that had Tide contacted Mrs A, the scam would have quickly been uncovered.

Neither M nor Tide accepted our Investigator's view. Tide didn't think it should have been concerned with the security of the account, due to other historic larger transactions that had been made. But it did concede that an intervention would have been warranted when the third payment was made.

As agreement couldn't be reached the complaint has been passed to me for a decision.

What I've provisionally 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 very 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.

In the circumstances of this case, the fraudsters were able to utilise remote access software and it's not in dispute the fraudsters used this to complete a number of steps that allowed the payments to be made. But overall, I'm persuaded that the payments made from M's Tide account were 'authorised payments'. Mrs A was of the understanding that the money in the account needed to be transferred, in order to keep it safe, and she provided OTP's, that enabled the payments to be made. On balance, although M was the victim of a sophisticated scam and did not intend the money to go to the fraudsters, I'm satisfied she consented to the payments being made. So under the Payment Services Regulations 2017, and the terms and conditions of the account, M is presumed liable for the loss in the first instance.

However, 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 processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

Taking the above into consideration, in this case, I need to decide whether Tide acted fairly and reasonably in its dealings with M when these transactions were made to new payees, or whether it should have done more than it did.

I've first thought about whether I think Tide should have intervened. Tide has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

I've thought carefully about what Tide has said, in that it thinks a precedent had already been set, through several high-value transactions having previously been made on the account, within a relatively short period of time. I've seen here that there were two large transactions that left M's account, in quick succession, in March 2022.

But, in the circumstances of this case, the transactions Tide refer to were over six months before the disputed payments were made. As well as this, Tide itself has said that the more regular activity on the account does show low-value payments which are more spread out. From the evidence I've seen, in the six months leading up to the scam, the typical spending on the account is significantly lower value card payments. I don't think a more historic larger payment should have deterred Tide from identifying the enhanced risk, that I think ought to have been apparent, when a payment for almost £30,000 was being made to a new payee that was clearing almost half of the account balance. It follows that I don't think, in the context of this complaint, that expecting Tide to have intervened, at the point this payment for £29,500 was being made, and to have done more before processing it is unreasonable.

Overall, I understand why Tide would point out those historic larger transactions. But while it is finely balanced I don't agree, in the circumstances of this case, that a precedent has been set here, to the extent that Tide should have allowed such a large payment for £29,500 to be progressed undetected and without intervention.

I've gone on to think about what would most likely have happened, had Tide intervened at this point. I think it's more likely than not Mrs A would have explained that she was moving money to keep it safe, due to fraud on an account held via a different provider. I also think it's likely if Tide had contacted Mrs A, she would've revealed that she had downloaded remote access software to allow a representative of the bank to do this for them – as they'd been instructed to do. Given this, in the circumstances of this case, I think it more likely than not Tide would have known by this point that a scam was indeed taking place and the scam could have been stopped at this point. It follows that I don't think the payment would have been made and M wouldn't have lost this or the subsequent payments.

Should M bear some responsibility for its loss?

I have thought carefully about whether M should bear some responsibility for its loss by way of contributory negligence (which might justify a reduction in compensation). And overall, I don't think it should.

I don't think Mrs A's actions, or inactions, fell far below the standard expected of a reasonable person. Unfortunately, Mrs A fell victim to a highly sophisticated and well-orchestrated scam. As with many scams of this type, the fraudsters employed an array of tactics, including spoofed text and telephone numbers and the use of remote access software, to convince Mrs A that the money in her business account was at risk. Importantly, in the circumstances of this case, she was also expecting a call due to the prior interaction with her genuine bank. Overall, I think a reasonable person would have acted similarly and been persuaded to follow the instructions of somebody, who they thought were trying to help keep protect them and keep their money safe.

Finally, as it is my intention to recommend that Tide refund M the remainder of its loss, there isn't any need for me to go into any great detail around the attempts Tide made to recover the money that was lost from the beneficiary banks. However, M has been particularly invested in trying to understand the source of the refund it received into its account for £20,077. So to clear things up, evidence I've seen from the beneficiary bank shows, without doubt, that this was money that was recovered from the second payment made (for £25,000). The beneficiary bank had initially indicated to Tide that no funds remained, however it had done so in error.

Putting things right

For the reasons explained above, my provisional decision is that I uphold this complaint and intend to ask ClearBank Limited to:

- *Refund M the remainder of the money it lost, being £43,109.90*
- *Pay 8% interest on this amount, from the date of the transactions to the date of settlement.*

In my provisional decision I invited both parties to send me any further evidence or arguments that they wanted me to consider by 7 March 2024.

On behalf of M, Mrs A responded and accepted my provisional decision and had nothing further to add. Tide responded, in summary it questioned why historic payments, which were over six months old, had been discounted when considering whether a precedent had been set – it added that these payments would have been part of the account history and be considered as part of spending habits.

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 come to the same conclusions as I did in my provisional decision (which I've set out above, and which also forms part of my final decision). As the reasoning is largely the same, I'll focus on addressing the point raised by Tide in response.

Tide has questioned why the payments that M had made, over six months ago, had been discounted. I'd like to assure Tide that those payments haven't been discounted and I thought about those. But when looking at whether a firm should have intervened, I will

consider the typical account activity and whether a disputed payment(s) ought reasonably to have given cause for concern in the individual circumstances of a case.

Here, as explained in my provisional decision, there were a number of factors which I'm persuaded put Tide on notice that its customer may have been at risk of financial harm. The typical and more regular account activity in the months leading up to this scam, were low value card payments – this was recognised by Tide in its own submissions. On balance, against this backdrop, I think a large transaction, to a new payee, which clears almost half the account balance, in the individual circumstances of this case, ought to have caused Tide concern. So much so, that I think it should have intervened and directly questioned Mrs A about those payments I've determined it should have been suspicious about.

Had it done so, for reasons already explained in my provisional decision, I think it would have made a difference and prevented the loss. Therefore, I've decided to uphold this complaint as I think Tide's failures contributed to M's loss.

Putting things right

For the reasons explained above, my decision is that I uphold this complaint and now ask ClearBank Limited to:

- Refund M the remainder of the money it lost, being £43,109.90.
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- Pay 8% interest on this amount, from the date of the transactions to the date of settlement.

My final decision

My final decision is that I uphold this complaint.

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

Stephen Wise
Ombudsman