

The complaint

E complains PrePay Technologies Limited – who I’ll refer to as Tide in the rest of this decision – didn’t do enough to protect it when it fell victim to a safe account scam.

What happened

E has an account with Tide which it opened in 2017 and accounts elsewhere too.

E is a small company with a sole shareholder – who I’ll refer to as “Mr C” in the rest of this decision. Mr C is also a director of E and has acted as E’s representative throughout.

On 19 July 2023 Mr C says he received a series of calls, apparently from Tide, saying that there had been fraudulent activity on E’s account and that he needed to move funds to a new “safe account”. Mr C says the numbers the calls came from matched Tide’s numbers, and that the people he was speaking to were able to prove that they could see his Tide app activity. He believed the calls were genuine, as a result. Mr C says he made two payments to the account he was given and then contacted Tide through its chat to check if what he was being asked to do was legitimate. Mr C says no-one responded to his subsequent query and that it was only when he called Tide – having made a total of six payments – that he was told that he’d probably been scammed. He asked Tide to stop the payments going out and contacted the receiving bank too, as did Tide.

Mr C says Tide dealt with E’s claim poorly and that it took Tide until the end of August 2023 to say that it had managed to recover £7,213.11 and that it could and should have done more. At that point Tide offered to refund 50% of the losses E had made from the third payment onwards less the amount it had managed to recover. That was on the basis that Tide accepted the third payment should have flagged as “unusual” – so it should have blocked any further payments at that stage – and that E should share some responsibility for the losses too. Mr C complained about Tide’s response and complained to our service.

One of our investigators looked into E’s claim and said that Tide should refund E from the third payment onwards as they agreed Tide should have intervened at that stage. Our investigator didn’t think it was fair to make E responsible for 50% of the losses. Both parties disagreed and provided additional information. Based on that additional information our investigator recommended that Tide should also refund the first and second payments. Tide was unhappy with our investigator’s recommendation and asked for E’s complaint to be referred to an ombudsman for a decision. So, E’s 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.

Last month I issued a provisional decision saying that Tide should have intervened when E attempted to make the third payment and that had it done so the scam would have come to light. I also said, given that Tide had already made it clear to Mr C that it would never call one of its customers to move funds, and wasn’t calling Mr C, that I didn’t think it was fair to

say that Tide should take responsibility for 100% of E's loss from the third payment onwards. So, I said that Tide should refund 50% of the payments E made from the third payment onwards – less any amounts it has recovered and refunded – and pay 8% simple interest from the date of payment to the date of settlement.

Both sides were invited to comment on my provisional decision. Tide accepted my provisional decision, E didn't. Mr C emailed me explaining in detail why E didn't accept my provisional decision, and we've spoken at length on the phone.

did Mr C panic?

In my provisional decision, I referred to what had happened in the days running up to this scam. I did so because I agree with Mr C that what happened in the days running up to this scam is relevant to understanding what Mr C did and didn't do, and why. I said as follows:

"I can see that Mr C contacted Tide on 17 July 2023 to say that there were some payments on E's account that he hadn't authorised. Those payments – as far as I can see – had nothing to do with this scam. But it meant that Mr C had been speaking to Tide in the two days before the scam E is complaining about happened. The agents Mr C was speaking to mentioned on a couple of occasions that Tide was seeing a spike in queries and so wasn't always able to get back to its customers as quickly as it wanted to. I can also see it meant E's card had a block place on it as of 19 July 2023 and that Mr C was waiting for his new card to arrive.

Mr C has told us that he started to receive calls from people claiming to be from Tide around midday on 19 July 2023 – he was driving at the time – and that the calls appeared to be from Tide numbers. I'm satisfied that he was concerned about E's account – and how secure it was – at the time given the unrecognised payments he'd been speaking to Tide about."

In his response to my provisional decision Mr C said he hadn't panicked and had remained calm throughout – and that he found the suggestion in my provisional decision that he'd panicked insulting and defamatory.

In my provisional decision I said:

"safe account' scams, by definition, rely on the victim being scared and under pressure and making transfers in a panic that with hindsight they wouldn't make. Before I say whether that's true of this case, I think it's important to say more about what else was going on at the time."

That was a comment I made when explaining why it isn't unusual for the victim of a "safe account" scam to overlook the fact – when they receive a confirmation of payee check where the details don't match – that the payee doesn't match. And, by definition, why a confirmation of payee check isn't always decisive in a "safe account" scam case when deciding whether or not a complaint should be upheld. As should be evident, my comment was a comment about "safe account" scam cases in general, and not about this complaint in particular. And so was not, therefore, a finding that Mr C had panicked.

Later on in my provisional decision, I said Mr C:

"was worried that his account had been compromised"

I didn't say Mr C panicked at any stage and confirmed – when I spoke to Mr C – that I accept he was calm throughout the call he had with the scammer. I remain of that view. I'm

satisfied, given what had happened in the days before the scam and what the scammer said, that Mr C was worried that E's account had been compromised. No more, no less. In the circumstances, that's entirely understandable – it's an entirely natural reaction.

did Mr C have good reason to ignore messages Tide sent and was Tide's failure to send a "confirmation of payee" cheque a "fatal mistake"?

Mr C said when I spoke to him, and in his submissions to us, that the chat messages he received at 1:38pm and 1:42pm weren't reassuring and looked like "chatbot answers". And that had he received a confirmation of payee check – which he didn't – showing that the name on the account he was sending money to didn't match the name he'd put in he wouldn't have gone ahead with the payments he did. He said that he was waiting for that check and that it was "vital" to his decision to go ahead and pay or not. He said it was the most important thing he was waiting for. And that had he received a negative confirmation of payee check that it would have "broken the spell". He described Tide's failure to send a confirmation of payee check as a "fatal mistake" and on that basis alone said that E should receive a full refund.

I've already told Mr C that I don't agree the messages he received at 1:38pm and 1:42pm looked like "chatbots answers". I'll explain why.

As I've already mentioned, Mr C had been chatting to Tide in the run up to this scam about transactions he didn't recognise and about getting a new card. He'd been speaking to an agent on the morning of the scam. I'll refer to the agent Mr C had been speaking to that morning by their initials – in other words as "GW" – throughout the rest of this decision.

At 1.30pm Mr C sent the following message to Tide:

"Hello. I am on the phone with the security department and they are asking me to move funds to my new account, as they have to change my sort code and account number. Is it a legit thing Tide do."

At 1:38pm GW replied:

"No [C]. There is no call from us."

Four minutes later – at 1:42pm – GW sent a second message:

"Please don't share any confidential information. Please be aware that Tide will never call or text to ask to disclose personal information or move funds."

I don't agree that these messages looked like a "chatbot" response. Both come from a named agent – rather than "Tide Member Support" which is where automated responses appear to be sent from – and the first one not only referred to Mr C by his first name but also responded directly to a question he's asked. In short, I don't agree with Mr C that he had a good reason to ignore the messages he was sent at 1:38pm and 1:42pm. I don't think that's something a person in the position he was reasonably should have done.

Mr C has told us that he was waiting for a confirmation of payee message from Tide and that this was vital to his decision to go ahead and pay or not. He's also told us that had he received a negative confirmation of payee check that it would have "broken the spell". Everyone accepts that in this case Tide didn't send any confirmation of payee checks. I can, however, see that Mr C sent a message to GW at 1:44pm. That message said:

"The new sort code is XXXXXX, the account number is XXXXXXXX, could you double

check this is going to be my new account?"

As I said in my provisional decision, I think GW had already made it clear that Tide would never call one of its customers to move funds, and that Tide wasn't calling Mr C. It's clear from Mr C's 1:44pm message that he hadn't taken that fully on board at this stage – his 1:44pm message suggests that he still thought the account he was being asked to move money into was genuinely a "safe account". But he clearly had doubts. He's told us that his partner started filming what was happening before he messaged Tide because things had got "too strange".

The message that Mr C sent at 1:44pm effectively asked Tide for the type of information that E would have received had he been sent a confirmation of payee check. In other words, the message was effectively asking Tide for confirmation that Mr C was sending money to a new account in E's name which is what Mr C was told he was being asked to do. I can see that GW replied to Mr C's 1:44pm message at 1:48pm to say that his query had been forwarded to the relevant team and they'd be in touch soon. The third payment was sent 30 seconds after GW's 1:48pm reply. I can't, therefore, say that Mr C waited for confirmation that he was sending money to a new account in E's name before deciding to send another payment. I don't think it's unreasonable to say that he would have waited longer had the information been so vital.

Given what I've just said, I remain of the view that a confirmation of payee check wouldn't have made as big a difference as Mr C has said it would have made. That's not unusual in "safe account scams" when customers are put under pressure to make payments. In this case, I'm satisfied Mr C was worried E's account had been compromised and felt under pressure to make payments and that's why he went ahead and made the payments he did.

should liability be shared 50/50?

In my provisional decision I said that I thought liability in this case should be shared on a 50/50 basis. That's our starting point. I remain of the view that liability should be shared. That's because I'm satisfied in this case that there was some contributory negligence on the part of Mr C – who I also appreciate has been the victim of a scam. I've set out my reasons for that above. But, broadly speaking, they are that Mr C continued to make payments:

- despite the fact that what he was being asked to do was "too strange";
- despite receiving two messages from Tide saying that it wasn't calling him and that Tide would never call to ask for money to be sent; and
- despite his partner having suggested safer alternatives.

did the scammers hack Tide's systems and / or were Tide's systems compromised?

Mr C clearly believes that Tide's systems were hacked and compromised at the time. I can understand why he feels that way – he did, after all, receive calls and text messages that appeared to have come from Tide. In this case, however, I'm satisfied that the scammers simply "spoofed" Tide's number. That doesn't involve the scammers hacking Tide's systems – all they need is the right type of technology and Tide's number, which is publicly available, and they're able to pretend to be from Tide, or any other business they chose to pretend to be. Tide cannot stop scammers making these calls – no bank can – but it can warn its customers that these types of scams exist and have systems in place to identify when a scam is unfolding. Those systems should have picked up that E was potentially been scammed when Mr C attempted to make the third payment he did. The problem of "spoofing" is a problem, if anything, for the telecoms industry.

Putting things right

Given everything I've just said, I remain of the view that Tide should have intervened when E attempted to send the third payment in this scam. I also remain of the view that the scam would have been uncovered had that happened. In the circumstances, given what I've also said about what Mr C should reasonably have been expected to do, I remain of the view that Tide should refund 50% of the payments E made from the third payment onwards – less any amounts it has recovered and refunded – and pay 8% simple interest from the date of payment to the date of settlement.

My final decision

My final decision is that I'm upholding this complaint in part and require PrePay Technologies Limited to refund 50% of the payments E made from the third payment onwards – less any amounts it has recovered and refunded – and pay 8% simple interest from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 12 April 2024.

Nicolas Atkinson
Ombudsman