

The complaint

P, a limited company, complains that Tide Platform Ltd won't refund payments it says weren't authorised.

P is represented by Ms S, the director.

What happened

P holds an account with Tide. In March 2023 seven payments left P's account in a few minutes, all to merchants in Malaysia. All were seemingly made through ApplePay. The total paid was £1,469.30.

Ms S reported the transactions to Tide while they were still pending, saying she knew nothing about them. Tide investigated but didn't offer to refund the payments. They said their records show that Ms S had been sent a one-time passcode (OTP) to set up ApplePay on her device, and as their records showed the payments were made with her device, she must have authorised the transactions. But they accepted they hadn't investigated the transactions quickly enough and offered £75.

Not happy with this answer Ms S referred P's complaint to our service. One of our investigators looked into it but wasn't satisfied that the payments were authorised. They found that Ms S hadn't denied setting up the ApplePay on her device. But they weren't convinced by the authentication data sent by Tide. They didn't think there was enough evidence to link Ms S to the transactions and weren't persuaded the authentication data showed she had authorised the payments. They felt it was possible there was malware or remote access software on Ms S' phone. They recommended that in addition to the £75 for delays Tide should refund the transactions.

Tide disagreed, saying they felt on the balance of probabilities that Ms S had made the transactions, and that the data they'd presented was sufficient to show this.

As no agreement could be reached the complaint was passed to me to decide. After consideration I agreed broadly with the investigator's outcome, although my reasoning and redress were different. I issued a provisional decision which said:

The relevant regulations in relation to disputed payments are the Payment Service Regulations 2017 (PSRs). Broadly, these say that a payments services provider can only debit an account for payments that are authorised by their customer, or someone on their behalf. If the customer hasn't authorised the payment, the payment service provider can only hold them liable in very limited circumstances.

Section 75 of the PSRs says that when a customer denies having authorised the transaction, then it is up to the payment service provider to demonstrate the transaction was authenticated, accurately recorded, and not affected by a technical breakdown or some other deficiency. This section also makes it clear that the use of a payment instrument is not in itself enough to show the payment was authorised.

Ms S has always been consistent that she didn't make the transactions or allow someone else to do so. So, the onus is on Tide to demonstrate that its more likely than not she did. I've considered the evidence presented, and overall, I'm not persuaded by Tide's position. There are several factors that lead me to this conclusion.

- Tide's initial rejection is based on information from their finance partner that an OTP was sent to Ms S' phone to activate ApplePay. But I've seen nothing to suggest Ms S denied having set up the ApplePay on her device – in fact it seems to have been used for two undisputed payments prior to the disputed ones. These undisputed transactions were for shops in the UK.*
- The transactions are out of character for P's account, and all taken rapidly within 10 minutes of one another. This is potentially indicative of fraud.*
- There were further attempts to make payments after the card was blocked, which could indicate whoever was making payments wasn't aware of the block. Again, this is indicative of fraud.*
- Tide have supplied the technical data for each of the transactions to demonstrate that the payments were made using ApplePay – but in each case the payments are shown as having the cardholder "present". This would indicate the payer was physically with the merchant at the time. It's the same as the undisputed payments made using ApplePay, where Ms S was physically present in the shop. I can also see from the online logins that Ms S was contacting Tide a couple of minutes later with a known device, from an IP address in the UK.*
- The method of verification is listed as "signature", which ordinarily would mean the merchant getting the buyer to sign for the transaction. This doesn't make a great deal of sense for an ApplePay transaction, as the verification would usually be done with biometrics or the phone passcode.*
- When these discrepancies were put to Tide, they provided an explanation that this may refer to an "online signature". Tide have also suggested we contact Apple directly to explain the specific verification methods for each payment. But turning back to Section 75 of the PSRs, it is for Tide as the payment service provider to demonstrate that the transaction was authenticated correctly. I'm not confident that the data supplied is accurate. And I do not find Tide's subsequent explanations of these discrepancies as persuasive.*
- Tide do not have any information from the merchants linking P or Ms S to any of the transactions. They have argued that their involvement is to gather information in the initial stage of the investigation and forward it to the finance partner. There's no obligation on Tide to contact the merchants, but I would consider it a good opportunity to shed some light on the situation and support their position.*

It's not my role to determine exactly who made these transactions or how. The investigator has suggested the possibility of malware or a remote access trojan on Ms S' phone. Although I also note that Ms S has confirmed she didn't have any issues with any other accounts, or with the phone itself. So, I'm not necessarily persuaded malware is the most likely outcome here. But in any event, I'm not persuaded by the information given by Tide that these transactions were correctly authenticated, and therefore properly authorised.

On that basis I don't see that Tide had authority to debit P's account, and I've no indication Ms S has shared security credentials, either intentionally or with gross negligence. As such the funds should be returned to P – along with 8% simple interest to represent the period the company has been without the funds.

Tide have already offered £75 for the delays in responding to the claim. Taking everything in to account I consider this to be reasonable.

Ms S responded on behalf of P to accept this outcome. Tide responded to say that the information they had showed that the payments were made using Ms S' device. They said it was possible they were made by her or someone in possession of her device, but they can only speculate on the specifics.

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 rereviewed the evidence afresh, I remain satisfied with the outcome reached in the provisional decision.

The reiterate the position from the PSRs, when a Payment Service User denies having made a transaction it is up to the Payment Service Provider to demonstrate that the payment was authorised, and that the use of the payment instrument isn't enough in itself to show this.

Tide's response concentrates on the data supplied which shows ApplePay was used to make the payments. But as outlined in the provisional decision, I'm not persuaded this data can be relied upon – there's no indication Ms S or the device that was used was in Malaysia at the time and in any case this conflicts with the same device contacting Tide from within the UK at the same time. No reasonable explanation has been provided by Tide to explain this contradiction, nor for the payments apparently being authorised by signature.

Overall, I'm not persuaded Tide have shown the payments were authenticated or authorised correctly. Ms S on the other hand has been consistent that she didn't agree to them, and I've found her story on this persuasive. And Tide have presented no further evidence to link either Ms S or P to the transactions.

I remain satisfied that under the PSRs the fairest outcome is for Tide to refund the transactions in dispute. And I'm satisfied it would be appropriate to add 8% simple interest per annum to reflect the period of time P has been without these funds.

Neither party had any further comments about the delays to responding to the claim, so I'm satisfied the £75 already offered is appropriate.

My final decision

My final decision is that I uphold this complaint and direct Tide Platform Ltd to:

- Refund the disputed transactions totaling £1,469.30.
- Add 8% simple interest per annum to this amount from the date of payment to the date of settlement.
- Pay P £75 compensation if they have not already done so.

If Tide considers that it's required by HM Revenue & Customs to deduct tax from that interest, it should tell P how much it's taken off. It should also give P a tax deduction certificate if asked, so P can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 31 July 2024.

Thom Bennett

Ombudsman