

The complaint

S is unhappy ClearBank Limited, trading as Tide, will not refund £37,775 that it lost as the result of two scams.

Mr Y has brought the complaint on behalf of S and through a representative. For ease of reading I will refer solely to Mr Y in this decision.

What happened

As both parties are familiar with the details of the scam I will not repeat them in full here. In summary, Mr Y fell victim to two separate rent-to-rent property investment schemes that he discovered through a Facebook group he was a member of. He made the following faster payments to two different recipients.

	payment	date	time	value
scam 1	1	17/01/2023	5:43pm	£1,000
	2	18/01/2023	5:42pm	£3,000
	3	19/01/2023	7:02am	£3,000
	4	20/01/2023	6:32pm	£1,960
	5	02/02/2023	5:56pm	£4,335
	6	03/02/2023	7:15pm	£2,500

scam 2	1	28/02/2023	4:27pm	£500
	2	01/03/2023	5:42am	£4,500
	3	02/03/2023	1:29pm	£3,000
	4	02/03/2023	4:01pm	£2,000
	5	03/03/2023	3:54pm	£1,000
	6	03/03/2023	7:27pm	£8,000
	7	06/03/2023	3:11pm	£2,500
	8	07/03/2023	3:44pm	£1,000

He received a return of £520 as part of scam 1 on 1 February 2023. In both cases Mr Y realised he had fallen victim to a scam when the expected returns were not paid and the scammers did not return his messages. Mr Y had opened the Tide account nine days before payment 1 in scam 1 stating S was a real estate management company. He reported the scams to Tide on 31 May 2023.

Mr Y says Tide did not do what it should have to protect S's money. Tide says there was no reason for it to intervene given the characteristics of the payments. Whilst it agreed it should have provided warnings it did not feel this would have made any difference. And by the time Mr Y reported the scams the money had left the beneficiaries' accounts.

Our investigator did not uphold Mr Y's complaint. He said the payments were not unusual or

suspicious and so did not warrant an intervention from Tide. And it had done what we would expect to try to recover the funds once the scams were reported but it was too late by then.

Mr Y disagreed with this assessment and asked for an ombudsman's review. He said the activity on the account was highly irregular for a business and payments left the account incredibly quickly to these other non-owned businesses. The expected standard of probing questions would have uncovered suspect context which would have led to Tide breaking the scam. The industry has been aware of the risks of international property arrangements since the creation of timeshare scams dating back to the 1980s and so Tide should have uncovered these scams.

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 have reached the same conclusion as the investigator. I'll explain why.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case as Tide is not a signatory to this voluntary code.

There's no dispute that Mr Y made and authorised the payments. Mr Y knew where he was sending the money and the reason why. At the stage he was making these payments, he believed he was investing in two different rent-to-rent property schemes. I don't dispute Mr Y was scammed and he wasn't making payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Tide has an obligation to follow Mr Y's instructions. So in the first instance Mr Y is presumed liable for his loss. But there are other factors that must be considered.

Tide is an Electronic Money Institution (EMI) and at the time the payments took place it wasn't subject to all of the same rules, regulations and best practice that applied to banks and building societies. But it was subject to the Financial Conduct Authority's Principles for Businesses and BCOBS 2 and owed a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible.

In the circumstances of this case I do not find Tide can be held liable for Mr Y's losses. I'll explain why.

The account was opened nine days prior to the first fraudulent transaction in scam 1. I don't think Tide had any reason to intervene in any of the payments. It was a new account so Tide could not have reasonably said these transactions were out of character. They were not high value for a business account, nor made in quick succession. The payment references were clearly linked to property and Mr Y had said S was a real estate management company. So I don't think Tide needed to do anything prior to following Mr Y's payment instructions.

Similarly I do not think the payments as part of scam 2 had traits that meant Tide should have identified them as likely to be fraudulent and made a direct intervention. Payment 6 was higher in value, but this was a business account - plus higher value payments in themselves are not automatically suspicious.

Mr Y says the number of payments ought to have been a red flag as paying for a service from a company is done with one payment, not multiple ones. But I do not find this to be a persuasive argument, I am unsure what evidence this claim is based on and I can see a number of reasons why a business may purchase goods or services from another company over a number of days. And as this was a still a relatively new account at this stage Tide did not have enough payment history to allow it to conclude this was out of the norm. It is a very different scenario to, say, an individual sending multiple payments of increasing value, in more rapid succession, to a new payee. And there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

Tide said it ought to have presented Mr Y with automated scam warnings based on the payment category he selected, but that it felt this would not have made any difference. I agree with this statement. From the discussions between Mr Y and the scammers I have read I think Mr Y felt confident he had asked the right questions, he was very keen to progress the opportunities and the scammers had both built a high level of trust. For scam 2 Mr Y had openly discussed how to breakdown the total payment needed in order for it not to be blocked. So I think it's most likely any scam warnings would not have changed Mr Y's decision to send the payments. It has to be noted he went ahead with scam 2 despite having realised he had lost money to scam 1 in almost identical circumstances.

It follows am not holding Tide liable for any of the losses linked to scam 1 or 2.

Did Tide do what it should have when it became aware of the scams?

Mr Y did not report the scams until 31 May 2023. By this stage Tide has confirmed the funds had left the recipient accounts (also held at Tide) and so it could not return any of the funds to Mr Y. It has accepted that it did not respond in a timely way to Mr Y's fraud claim. I note it only did this at around the time it issued the final response letter to his complaint on 24

August 2023. I agree this is unacceptable, but we wouldn't award compensation for distress or inconvenience to a company, even if its directors or employees may have experienced those types of impacts individually as a result of the financial business's mistake. So I can make no award to Mr Y to recognise Tide's delay in responding to the fraud claim he made on behalf of S.

My final decision

I am not upholding S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y, on behalf of S, to accept or reject my decision before 13 January 2025.

Rebecca Connelley
Ombudsman