

The complaint

Mr H, as a director of G, a limited company, complains that Advanced Payment Solutions Limited trading as Cashplus (Cashplus) won't refund him the money he lost when he fell victim to a scam.

What happened

What Mr H says

Mr H says he was cold called by a company I'll call company A in the summer of 2018. Company A offered Mr H a cryptocurrency investment opportunity which promised good returns and was protected by the FSCS.

Mr H says he was persuaded to invest based on a total credit refund model which required a minimum investment of £5,000. This model required Mr H not to withdraw any funds for a 90-day period, at the end of which he was guaranteed to get his original investment back. He would also receive any profit made in the period. Mr H was also offered a bonus scheme which meant that company A would match his investment capital to maximise profit returns. This meant that if Mr H invested £5,000 a bonus of £5,000 would be added to his account by company A. Experienced professional traders would actively manage his investment portfolio by executing three or four trades a day using a small proportion (1 to 2%) of the original amount invested.

Mr H says he completed extensive enquiries in to company A before he first invested because he wanted to ensure that company A was genuine. He says he checked the following:

- Its website (which was active at the time but isn't now);
- Its Facebook page, on which he saw information about cryptocurrencies, pictures of coins and no negative publicity;
- An internet search which found no adverse publicity;
- The FCA website for information about cryptocurrencies to understand how they work and because it was a new area of investment for him. Mr H says he saw that the FCA regulates certain investment opportunities including cryptocurrencies;
- The FCA scam warning list which didn't have an entry in relation to A.

After completing these checks Mr H invested £5,000 on 2 August 2018. Company A had a compliance department, verification process and checked whether the investment was affordable based on Mr H's financial circumstances, making him feel it was genuine. Mr H was able to see how his investment was performing on an online trading platform. He says this showed good returns of between 30 and 50% a week. Mr H was told if he invested more the total credit refund period would be extended and his returns would increase as the percentage gain would increase with a greater sum invested.

Company A directed Mr H to make the following payments in to what were described to him as "FCA regulated escrow" accounts:

Date	Amount	Recipient
02/08/18	£5,000	X
22/08/18	£2,970	Y
03/09/18	£5,000 returned by Cashplus	
14/09/18	£9,150	Z
17/09/18	£8,750	Z
18/09/18	£7,100	Z
30/10/18	£10,000	Z
31/10/18	£8,500	Z
01/11/18	£8,500	Z
Total	£54,970	
Less sums later refunded from Z	£27,000	
Total outstanding	£27,970	

Z is a foreign exchange company.

After making the payments Mr H says an analyst at company A called him weekly and if Mr H called company A then a professional sounding receptionist transferred him to an analyst. In these calls Mr H was told how his investments were performing and he says the information he was given in calls matched what he was able to view on an online platform he had access to.

Mr H was later advised of a new investment opportunity and invested further funds from a different account. A complaint about these payments has been considered separately.

In February 2019 Mr H wished to withdraw G's money but received no response from company A and realised he'd been the victim of a sophisticated scam. Mr H says it was at that stage he found out company A wasn't a genuine investment company. There was a genuine company with a very similar name to company A (one letter different) but it wasn't an investment company. He reported the scam to Cashplus on 23 February 2019.

Mr H would like Cashplus to return £29,970 to him. He says the payments he made weren't in line with normal spending on the account and Cashplus should have contacted him about them. Cashplus also returned £5,000 on 3 September 2018 but didn't notify him of this or provide an explanation. Had it done so Mr H says he would have been prevented from making further payments. Mr H also says Cashplus delayed starting the indemnity claim process by around 11 weeks. In addition, Mr H would like Cashplus to compensate him for the financial and psychological distress and inconvenience its actions have caused him.

What Cashplus say

Cashplus issued its final response in May 2019. It said Mr H contacted it on 23 February 2019 to report the fraud. On 7 March 2019 the transactions made on 30 and 31 October and 1 November 2018 (totalling £27,000) were refunded to Mr H. Cashplus also noted that on 3 September 2018 the £5,000 payment made to X was refunded to Mr H's account.

Cashplus went on to say it contacted the receiving bank for the payments to Z on 4 March 2019, but it was told by this bank on 13 May no indemnity claim had been received. At that stage Cashplus said some funds remained, but it didn't know how much. Cashplus apologised for the delay and said it wasn't sure if it was the fault of the receiving bank or Cashplus. It noted Mr H had made multiple calls and not received a lot of information from

Cashplus and offered a £40 distress and inconvenience payment and to refund the annual business account fee of £69. The last three payments to Z were later returned to G.

Mr H says he had no knowledge the £5,000 credited to his account on 3 September 2018 was a refund of the payment he made to X. He says if Cashplus had notified him of this and explained it he'd have been prevented from making further payments. He received previous credits where the reference started with "Bank" and the returned payment on 3 September also started with this word.

Our investigation so far

I won't go in to any detail about what the investigator said in her opinion as both parties have had the opportunity to review her findings. In summary, the investigator said Cashplus should have identified the payments Mr H made as unusual or out of character and asked him some questions about the purpose of them. But she felt that even if Cashplus had done so, the scam would not have been uncovered and Mr H would still have made the payments.

Mr H didn't accept the investigator's opinion. He said:

- Although the investigator said she'd taken in to account relevant law, regulations and codes she hadn't. Mr H cited numerous acts, principles and codes he feels should be taken in to account. He also said the investigator and Cashplus failed to consider the Quincecare duty.
- Mr H referred to FCA Principles 2 and 6 and said Cashplus should have taken proactive steps to help to identify potential fraud and been on the look-out for unusual or out of character transactions. He referred particularly to the BSI Code.
- The first payment was large and out of character given his recent account activity. He was also paying a new payee, which was unusual.
- Cashplus failed in its duty of care to him by failing to recognise a fraudulent payment and failed in its legal obligation to deter and detect financial crime and failed to provide a strong customer authentication procedure.
- The conclusion that he would have invested even if Cashplus had intervened was incorrect and based on subjective views only.
- Cashplus has failed in its duty to make reasonable efforts to recover his funds.
- He believed he was dealing with an FCA regulated firm. If Cashplus had complied with its obligations, he'd have known it was a scam and not made the payments.
- He completed various checks to satisfy himself the company he was investing in was genuine and he wasn't being scammed. The fact he took these steps shows he was concerned and would not have gone ahead if he thought there was a risk.
- Mr H referred to PSR 2017 and said he hadn't authorised the payments as the investigator concluded because the payment wasn't received by the beneficiary for the purpose he intended.
- The investigator was wrong to say it wasn't Cashplus' responsibility to establish with absolute certainty whether the payment was genuine, but that Cashplus should have asked proportionate questions.
- Mr H was not experienced in this type of investment and had a low attitude to investment risk. Cashplus staff would have much greater knowledge, so had questions been asked he would have been able to identify this was a scam.
- Further questions from Cashplus would have established he was cold called, communication was by email and the literature he was provided with wasn't genuine. Mr H said had he been asked to provide the documents he'd received Cashplus' advanced fraud detection processes, tools and software would have established he was not investing in a genuine company.

- The investigator referred to the investment platform that looked genuine and like other platforms he'd seen before, but he hadn't seen other platforms as he hadn't invested in any activity like the one proposed.
- Mr H thinks he should be awarded compensation for the psychological and emotional distress and inconvenience the matter has caused him.

I issued my first provisional findings on 8 April 2021 and asked Cashplus to refund G's losses in full together with interest at 8% simple per year from the date of each payment to the date of settlement. I said the first £5,000 payment was unusual and out of character and Cashplus should have asked questions about it. Had it done so I felt on balance the scam would have been uncovered and the payment wouldn't have been made. I also noted this first payment was later refunded to G. Mr H, on behalf of G, agreed with my provisional findings but Cashplus didn't. One of the points it made in response was that G is described as a "*Financial Services Company*" so my comment that Mr H wasn't experienced in this type of investment was surprising.

After reviewing the responses to my provisional decision, I issued a further provisional decision. I upheld G's complaint for the same reasons as I set out in my provisional decision of 8 April 2021 but reduced the award I made to G by 50%. I did so after reviewing G's website and in particular the profile of Mr H as managing director. This referred to his "extensive" investment experience. Given this, I felt Mr H should reasonably have known that the deal offered by company A, including the rate of return, the lack of risk and the 50% bonus was unrealistic and too good to be true. I went on to say that Mr H should also have been aware that the company he looked up on the Companies House website with a similar name to company A wasn't an investment company and that the checks he completed before investing didn't go far enough.

Cashplus responded to my second provisional decision and said Mr H had omitted crucial factual information and not been truthful about his investment experience. It suggested that he hadn't fallen victim to a scam but had made a poor investment choice using business funds. Cashplus went on to provide information from its analytics department which it said showed G's first payment of £5,000 wasn't unusual. It referred to average payments in two categories – banks and management consultancy activities – of £2,271 and £1,505 and also provided deviation figures.

Mr H, on behalf of G, raised multiple points in respect of my provisional decision of 20 May 2021. He referred to his response to the investigator's opinion when he raised approximately 39 points in support of his belief that Cashplus should refund him in full and repeated several of them including reference to regulations, codes and industry practice. I included some of these points above when I discussed Mr H's response to my provisional decision. I have summarised below some of Mr H's points that I consider to be most relevant.

- Cashplus failed in its duty to protect him from fraud. They were the experts but didn't ask questions or provide any warnings.
- He doesn't agree that if he'd been alerted to the possibility of fraud he'd have gone ahead and invested G's funds anyway. His actions and behavior when he realised he may be a victim of fraud are proof that if Cashplus had acted appropriately he wouldn't have gone ahead with the payments.
- Cryptocurrency was a new area of investment for him and he had no experience in it, so he wasn't able to determine if an investment opportunity was too good to be true. Mr H also said he had a low attitude to risk and was relying on analysts at company A because of his lack of experience. Given these points his actions don't fall below what could be expected of a reasonable person.
- He doesn't agree he should be held partially responsible. G focuses primarily on

management consultancy services around transformation programs and is not a financial services company. The word “extensive” on G’s website isn’t used to indicate or imply that Mr H has extensive investment experience but to imply that he has experience of working on a range of transformation programmes and projects that could touch on investment and related areas.

- Mr H referred to a newspaper article that he says shows Cashplus accounts are often used by fraudsters, to a spokesperson for PSR in respect of consumers still bearing a high proportion of losses, a quote from the Chief Executive of the Lending Standards Board and to another bank that offers a fraud guarantee.
- Mr H says Cashplus’ recovery failings should lead me to conclude G should be refunded in full.
- On a fair and reasonable basis G should be refunded in full.

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.

In deciding what’s fair and reasonable in all the circumstances of a complaint, I’m required to take into account relevant: law and regulations; regulators’ rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer’s account.

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 Cashplus 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 make 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.

In this case, I need to decide whether Cashplus acted fairly and reasonably in its dealings with Mr H when he authorised payments from G’s account or whether it could and should have done more before processing them. That is a question of fact and degree depending on the circumstances of each individual case.

Mr H has raised complaint points about other financial businesses. I’m only considering his complaint against Cashplus so will not comment on these other complaints. And although Mr

H raised a lot of points in response to the investigator's opinion and my provisional decision of 20 May 2021, I've focused on what I consider to be most relevant. I've also focused on the individual facts of G's complaint so will not be commenting on the newspaper article referred to by Mr H, on general comments about scams from other parties or the approach taken by other financial institutions.

Did Cashplus act fairly and reasonably in Mr H's case?

As I said, I first need to consider whether the transfers Mr H made were unusual or out of character. In doing so, I'm mindful of the fact the account was a business account, which is generally used differently to a personal account.

The account was opened in October 2017 and a set-up fee of £69 was paid and refunded. There were then a number of significant payments in to the account amounting to over £32,000. The last credit was for £5,000 on 24 July 2018 before the first scam payment of £5,000 on 2 August 2018 to a new payee. So, in around ten months there were no payments from the account other than the refunded £69 set-up fee. In the circumstances I consider a payment of £5,000 was unusual and uncharacteristic and Cashplus should have asked Mr H some questions, whether Cashplus' systems picked it up or not. When the account was set up it was said to be a savings account. The analytics information Cashplus has provided doesn't alter my opinion, as the important factor is whether the payment was unusual given G's previous account and payment history – not whether it was in line with average spending for similar accounts.

I've thought carefully about whether the kind of questions I believe ought fairly and reasonably to have been asked by Cashplus would have made a difference in this case. Mr H has said the investigator was wrong to say Cashplus should have asked proportionate questions and didn't have a responsibility to establish with absolute certainty whether the payment was genuine. I disagree. I'd expect Cashplus to ask probing questions with the aim of uncovering a potential scam, to have alerted Mr H to the fact investment scams took place and to provide appropriate scam warnings.

I consider Cashplus should have asked Mr H how he found out about the investment opportunity, what the investment was and some information about it, the rate of return and whether he'd checked the FCA register. Mr H would have said he received an unsolicited call in the summer of 2018 when he decided to invest in cryptocurrencies for the first time. Although investing in cryptocurrency is renowned to be risky, Mr H would have said he was investing without any risk. The email he received before he invested said,

"The realistic earning potential with a £10,000 account doing £200 trades is £160 profit per trade and even if we only have a 81.7% success rate you will still look to achieve weekly profits in the region of £250 - £550 depending on how often we trade."

This is a very high rate of return, particularly for an investment Mr H said involved no associated risk. In terms of FCA registration, Mr H would have said he'd read some general information about cryptocurrencies on the FCA website and looked at the scam warning list. He hadn't checked whether company A was FCA registered though. All of these factors would have rung alarm bells if questions had been asked

I consider that although this was a sophisticated scam the information Mr H would have provided to Cashplus about the proposed investment was implausible and suspicious. Cashplus were the experts in this case and would have been aware of the prevalence of investment scams of this nature, where an individual receives an unsolicited call and is persuaded to invest in either a fake or cloned investment company. The fact Mr H said the

investment was offered on the basis there was no risk of loss and company A was adding a 50% bonus makes it even more implausible. (Whilst Mr H has been clear throughout this service's investigation that the investment was offered with a guarantee all his funds would be returned after 90 days irrespective of trading performance this isn't what the document Mr H signed says. The guarantee actually says that if at any point in the first 90 days the client incurs a loss of capital company A would refund the entire amount back in to the trading account for "*a second bite at the cherry*". But I'm persuaded Mr H was told and believed all of G's funds would be returned, and this is what he'd have told Cashplus, if asked.)

I see no reason why Mr H wouldn't have taken Cashplus' warnings seriously if he'd been cautioned to consider and check the legitimacy of the investment before proceeding. Company A was a fake investment company and I think this could have been established quickly. There is a company registered at Companies House with a name similar to company A, but it's not an investment company and so is not FCA registered. So, on balance, I think if an appropriate warning had been given Mr H wouldn't have made the first payment of £5,000.

I don't agree with Cashplus' assertion that Mr H, on behalf of G, wasn't scammed but made a poor investment choice. Mr H has provided a police report prepared in November 2019 which refers to multiple victims and suspects. The report says, "*Based on my investigation to date, I can safely conclude [Mr H] is a fraud victim.*"

I haven't gone on to discuss the later payments because if the spell had been broken and the payment discussed above not been made then it follows the other transfers wouldn't have happened either. So I think Cashplus should also refund the later payments. I will just comment that by the payment on 14 September 2018 the payment amounts had risen substantially so the payments were even more unusual and out of character.

There is a further point I'd like to discuss. After Mr H made the second payment the first payment of £5,000 was refunded to G's account, but Mr H says he wasn't aware of this. I've asked Cashplus about this payment and understand that it was made to another Cashplus account that was closed and this is why the funds were returned. Cashplus explained it wasn't its normal procedure to notify a customer when funds are returned. The funds were returned with the reference "BANK ADVANCED ADVANCED", which Cashplus believe shows the credit is from Cashplus.

Whilst I consider Mr H should have noticed this credit and asked questions if he wasn't sure of its origin, I think that after returning it Cashplus should have been more alert to the possibility of fraud, particularly given that the transfer amounts increased after the £5,000 payment was returned. This point adds weight to my conclusion Cashplus should refund G's lost funds.

Was Mr H also at fault?

Having reviewed the responses from both parties I still think Cashplus shouldn't refund G's losses in full. Whilst I accept that Mr H hadn't invested in cryptocurrency before and may not have had any experience of this particular type of investment, I'm persuaded he had sufficient investment knowledge to know that investing in cryptocurrency is inherently risky. He has told this service that he read the general information about cryptocurrency on the FCA website. Whilst I can't be sure what the FCA website said at the time I think it's more likely than not that it referred to the fact that investing in cryptocurrency involves high risks. The FCA website currently says, "*cryptoassets are considered **very high risk, speculative investments***".

Even if similar information wasn't on the FCA website at the time (which I consider to be unlikely) I consider that Mr H should reasonably have been aware of the high risks associated with investing in cryptocurrency. Mr H's personal profile on G's website says Mr H, "*has extensive financial planning...investment, compliance...experience*" and refers to the fact he's worked for major investment banks in the UK and abroad. Given Mr H's "*extensive*" investment experience I consider he should reasonably have known that the deal offered by company A, and in particular the lack of risk, was unrealistic and too good to be true. Mr H should reasonably have been aware that investing in cryptocurrency is inherently risky.

Whilst I accept that Mr H doesn't give investment advice in his role as a director of G, I don't agree with his interpretation of what his profile on G's website says. Mr H has used the word "imply", but I feel the profile is clear that Mr H has investment experience. In these circumstances I'm not persuaded he shouldn't have known that investing in cryptocurrency on a low or no risk basis wasn't realistic.

Given his experience, I also think Mr H should have recognised that the company he looked up on the Companies House website with a very similar name to company A wasn't an investment company and that the other checks he completed didn't go far enough. In the circumstances, I consider it fair and reasonable to ask Cashplus to pay 50% of G's losses.

Recovery

I'm not satisfied that Cashplus acted promptly once Mr H notified it of the fraud. But given that Mr H, on behalf of G, reported the scam to Cashplus over five months after the first scam payment and over three months after the last scam payment I consider it most unlikely that any further funds would have remained if Cashplus had taken prompt and appropriate action when the scam was reported. This is because scammers usually remove funds very quickly – usually within hours.

Three different banks received G's funds in respect of payments to X, Y and Z. As I've mentioned before, the £5,000 payment to X was later returned to G. The receiving bank for Y confirmed that no funds remained. Turning to the payments to Z, although Mr H notified Cashplus of the scam on 23 February 2019 no action was taken until 4 March when Cashplus called the receiving bank. Cashplus was asked to send an indemnity, but it appears this was sent to an incorrect email address and so wasn't received until some months later. So Cashplus didn't act promptly. But the reason the last three payments made to G were returned was because the account was under review from October 2018 and on completion of this review these payments were returned. So I don't believe that the payments G made prior to October 2018 would have been available to return to G when the scam was reported in February 2019.

Compensation

I've also considered whether Cashplus should pay Mr H further compensation to recognise the distress and inconvenience he's experienced as a result of its actions. I appreciate that the scammers are the ones responsible for the majority of the upset Mr H has suffered. But this complaint is brought by G, which is a separate legal entity to Mr H and can't suffer distress or inconvenience. So I'm not making an additional award for distress and inconvenience.

Putting things right

Overall, for the reasons set out above, I consider Cashplus should have done more to protect G's funds but that in all the circumstances of the case it is fair and reasonable to award 50% of G's losses.

My final decision

For the reasons I've outlined above, Advanced Payment Solutions Limited trading as Cashplus should:

- Refund G £13,985;
- Add interest to the above at the rate of 8% simple per year from the date of each transaction to the date of settlement. If Cashplus deducts tax from this interest, it should provide an appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 12 July 2021.

Jay Hadfield
Ombudsman