

The complaint

Mr R complains as a director of C (a limited company) that Advanced Payment Solutions Limited trading as Cashplus (“Cashplus”) has held him liable for transactions he’s said were carried out fraudulently.

What happened

Three transactions equalling around £4,000 left C’s account at around 1am on 1 April 2020. The payments were to a gambling site that Mr R has said he’s never used.

The next morning, at around 8 am, when he tried to make a purchase his card wasn’t working and he received several text messages from Cashplus asking him to verify the transactions Mr R is disputing. He contacted Cashplus and confirmed he hadn’t authorised them but after investigating the matter Cashplus felt it was likely he did.

Mr R made a complaint, but Cashplus maintained it felt he likely authorised the transactions. He brought the complaint to our service and our investigator didn’t uphold it as overall there didn’t seem to be a plausible explanation as to how someone else could’ve carried out the transactions. Mr R didn’t accept the investigator’s findings so the complaint has been passed to me to make a decision.

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.

The regulations relevant to this complaint are the Payment Services Regulations 2017 (PSR’s). I won’t quote them directly here but, broadly speaking they set out when a customer is responsible for the transactions on their account – typically when they’ve been authorised by the consumer in some way. And where there’s a dispute about whether a customer authorised a transaction there needs to be evidence to support the bank’s case if it wishes to hold the customer liable.

Having considered the evidence available in this case very carefully, overall, I’m not persuaded it’s more likely than not Mr R has been the victim of fraud. So I think it’s reasonable that Cashplus has held him liable for the transactions.

Mr R has said someone else must’ve stolen his card details and used them to make the transactions online. But I don’t think he’s been able to provide a plausible explanation as to how this might’ve happened.

Mr R has said he still has his card and there isn’t anyone he knows of that might’ve had access to it. He’s said he recalls using an ATM about a week before the transactions took place and he couldn’t make withdrawals. So he thinks his card might’ve been compromised then. But, what he’s said about this incident doesn’t reflect what we know about how ATM scams tend to work. And, it’s not clear why if someone had obtained his details they

would've waited to try and use them until a week later. So it doesn't seem like this offers a plausible explanation as to how someone has been able to carry out the transactions.

Mr R also said he recalled accidentally disclosing his card CVV number to a Cashplus staff member over the phone about a week before the transactions took place. He seems to have suggested they stole his card details. He hasn't provided much information about how this came about or why he gave them this information to someone. Cashplus' records don't show any contact with Mr R around this time, and there's no record of Mr R raising this when he reported the fraud or since.

And it seems strange a staff member would opportunistically commit fraud, given the risks involved and the measures Cashplus likely has in place to protect the sensitive data it holds. I've also noted Mr R only said this happened someway through our investigation into his complaint and after he was told the ATM situation he'd described wasn't consistent with our understanding of how ATM scams worked. So overall, given there's no evidence aside from Mr R's testimony this conversation took place, I'm not persuaded this does provide a plausible point of compromise.

Although I don't feel I've seen sufficient evidence of how a fraudster might've stolen Mr R's card details, I accept this could've happened without his knowledge. But there are other points in this case I've considered when reaching the conclusion Mr R more likely than not authorised the transactions.

Cashplus's records show Mr R checked his account eight minutes before the transactions started. Mr R doesn't appear to have disputed this and said he regularly checks his account as it's a business account. But it seems unusual he would be checking a business account at around 1am and I think it's relevant he was checking his account minutes before a series of fraudulent transactions were made.

The disputed transactions themselves also don't reflect what we tend to see in cases where someone's card details have been stolen. After the transactions were carried out there was over £500 left available in the account. It seems unusual someone would go to the trouble of stealing Mr R's details but then not take or attempt to take all the funds available. And based on what I've seen, there doesn't seem to be a way the fraudster could've known the account balance before carrying out the transactions but Cashplus has confirmed there were no failed attempts at any additional transactions.

It also seems unusual they would've deposited money to a gambling website. I say this because the fraudster would've needed to have set up an account with someone's personal details, that likely would've been verified in some way to check their age. And whilst this is possible, it seems strange given there are other ways a fraudster could've used the same details to obtain more direct access to the funds in Mr R's account. It also appears Mr R claimed he'd been the victim of fraud around one month before the transactions that form part of this complaint that he was held liable for.

Mr R has said he has never used the particular gambling site payments were made to, but I haven't seen any information that might support this. And I'm mindful that as this account is his business account, it may not reflect his personal use of this, or any similar sites.

Our investigator has tried to contact the gambling site used in this case to try and establish what details have been linked to Mr R's card but didn't receive a response. And, as the site doesn't fall within our remit and it isn't party to this complaint it's not been appropriate for our service to pursue this any further. Mr R later tried to contact the site himself but hasn't received any response. And I'm satisfied he's had sufficient time to pursue this matter further if he wished to.

There isn't much substantial evidence in this case and it is finely balanced. But overall, on the balance of probabilities, and based on the information available, I think it's more likely than not Mr R authorised the transactions. So I don't think Cashplus is acting unfairly in holding him liable for them.

I'm surprised in this case to see that although Cashplus says it found the transactions unusual and blocked Mr R's card, it's not been able to provide any evidence it tried to stop the payments going through. From what I understand, it contacted Mr R several hours after the transactions had left his account to ask if they were genuine, by which point it was too late to prevent them. So despite recognising the transactions as unusual it didn't take any effective action to prevent them from leaving the account.

But, as I'm not persuaded Mr R has been the victim of fraud, I don't think Cashplus has failed to protect him from a financial crime or prevent the payment being made as I'm not persuaded any crime has taken place.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 16 September 2021.

Faye Brownhill
Ombudsman