

The complaint

Mr S complains that Advanced Payment Solutions Limited (trading as Cashplus) won't refund him for transactions he says he didn't make or authorise.

What happened

Mr S legitimately uses a gambling website I'll refer to as S and he has no complaint about transactions to that company. But in November 2020 he noticed similar payments going to a company he didn't recognise, which I'll call B. S and B have very similar names and almost seems as though they could be the same company. But they are actually separate entities.

Mr S called Cashplus when he noticed the transactions and said he didn't recognise them. He confirmed to Cashplus that he did spend with S but had never opened an account or gambled with B.

Cashplus investigated the transactions but declined to refund them. It believed Mr S had carried out the transactions himself. Within its reasoning it said:

- Mr S had used similar merchants many times before;
- Mr S had called Cashplus to ask about credits from B;
- Mr S was logged into his online service area while the transactions were happening;
- MasterCard 3DS was used to authorise the transactions, which would have required Mr S's password.

Cashplus then decided to close Mr S' account and sent him 60 day closure notice.

Mr S didn't agree with Cashplus' findings. He said he'd never disputed payments to or from B, only S. He reiterated he'd never used B or tried to claim credits from it. He brought the complaint to our service.

One of our investigators considered the complaint but didn't uphold it. He acknowledged that Cashplus had been incorrect when it said Mr S had asked about debits and credits involving B. But he thought there was evidence to show that Mr S had more likely than not authorised the payments to B. He said:

- it seemed unlikely an unknown third party had obtained Mr S' card details only to use them for gambling transactions and nothing else;
- whoever carried out the transactions would have needed Mr S' security information to get through the 3DS process;
- B provided Cashplus with the information it had on its account holder and it all matched Mr S' genuine details (including phone number, email address and postal address), meaning anything B sent would have gone to Mr S;

- similar payment amounts were made to both B and S; and
- Cashplus closed the account in line with its terms and conditions.

Mr S didn't accept the outcome and so the complaint has been passed to me for a final 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.

I'm sorry to disappoint Mr S, but I've reached the same outcome as our investigator and for broadly the same reasons. I won't be telling Cashplus it needs to do anything differently.

The considerations that are particularly relevant to this case are set out in the Payment Service Regulations 2017. They say, in summary, that a customer can only be held responsible for transactions that they have made themselves or otherwise authorised. And so I must consider whether it's more likely than not, based on the available evidence and on the balance of probabilities, Mr S did authorise the payments and should therefore be responsible for them.

The evidence I've seen persuades me that Mr S' correct card details were used and that, for some of the payments made, the MasterCard 3DS process was completed. That tells me that the transactions were properly authenticated and applied to Mr S' account. But that information in isolation doesn't answer the question of whether he consented to the payments.

There is more to be said about the 3DS process here that does support Cashplus' position that Mr S did consent to the payments. That's because completing the process would have required access to Mr S' 3DS password and also his registered mobile phone. Both are required when a payment is authorised through the 3DS system.

I've seen evidence which persuaded me that the 3DS process was completed for transactions to B. So that means someone was making a payment and had to use Mr S' password and phone to confirm the transaction. That happened on 14 November 2020.

Mr S has presented no explanation for how someone might have known his password or had access to his phone. And it's difficult to see how such a situation would arise. And so it seems more likely than not it was Mr S that completed the process.

I believe it's worth noting here that Mr S called Cashplus that same day – 14 November 2020 – to reset his 3DS so he could transact on his account. And so it seems he was aware of the process and how it worked.

Mr S has also said that no one had access to his card. He's said it was always on his person, in his wallet, as he worked away. And so no one had access to it. There doesn't seem to be a point of compromise for his card details. I'm not suggesting it's impossible for someone to have obtained them without him knowing. But there doesn't seem to be an obvious opportunity for someone to have done so. Particularly considering they'd also need to have known his full address, date of birth, phone number, email address and home address. All of those details were used for the account with B and I'm not persuaded it was someone other than Mr S that created that account.

The information provided by B also supports the position that it was Mr S that carried out the

transactions. I've already confirmed that all of the personal information matched. But it also seems that the same card was used without dispute on other accounts held within the same larger group of companies of which B is a part. And the account itself had been set up since 2018, which doesn't tie up with the possibility of an opportunistic fraudster obtaining and using Mr S' details.

I can see that some of the disputed transactions with B take place at a very similar time as genuine ones with S. As an example, on 14 November 2020, there is a genuine transaction with S at 22:10. That is right in-between two disputed payments to B at 22:01 and 22:22. It seems unusual to me that an unknown fraudster would be gambling in a very similar way to how Mr S genuinely was at almost exactly the same time. It seems more likely that Mr S was using to two different sites intermittently. A similar pattern can be seen on both 15 and 16 November 2020 as well, the only other days Mr S highlighted disputed payments.

With all of the above in mind I believe it is more likely than not Mr S carried out the disputed transactions himself. There doesn't appear to be a reasonable explanation for how someone else would have been able to complete the transactions without Mr S' authority. And so I won't tell Cashplus that it needs to refund them.

Our investigator explained that he thought Cashplus' actions in closing Mr S' account were fair and reasonable and he referred to the terms and conditions of the account. Mr S doesn't seem to have disagreed with the reasoning there and so the matter doesn't really seem to be in dispute. But, for the sake of completeness, I'll say that I believe Cashplus acted fairly and reasonably.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 November 2021.

Ben Murray
Ombudsman