

The complaint

Mr C complains that he was a victim of identity theft and that accounts, including a credit card account, were taken out in his name with Advanced Payment Solutions Limited trading as Cashplus (Cashplus).

What happened

What Mr C says

Mr C says that in 2018 he received correspondence from a debt collection company in respect of an outstanding amount on a Cashplus credit card taken out in November 2013. Mr C says he didn't have a credit card with Cashplus and that at the time it was taken out he was in hospital. Mr C later found out that further accounts were opened in his name in June 2014, August 2015 and February 2016.

Cashplus provided a final response letter on 25 September 2018. In this response Cashplus accepted the credit card account had been opened fraudulently and said all negative reporting with credit reference agencies would be removed; the debt would be written off; recovery action would cease, and £100 compensation was paid to Mr C. Cashplus then sent a further final response letter in which it said that following a review it could no longer accept the account had been opened fraudulently and so the credit reporting would remain. Cashplus went on to say it wasn't unsympathetic to the circumstances of Mr C's health and finances and so would not pursue him for the balance on the credit card account or ask him to return the compensation payment previously made. Finally, Cashplus said it would close all other accounts opened in Mr C's name.

Mr C maintains he did not take out a credit card with Cashplus. He also says that Cashplus should not be able to change its mind and that in doing so it has breached Financial Conduct Authority regulations. He would like any credit reporting by Cashplus to be removed and £1,000 compensation, given the impact of Cashplus' amended outcome on his health.

Mr C has provided evidence from his doctor and consultants, including a letter which states that he lacked mental capacity to deal with his financial affairs from 2008.

What Cashplus say

Cashplus say that:

- Regular payments were made to the credit card account until November 2015 which isn't indicative of a fraudulent account.
- In an email after the first final response letter Mr C said he received multiple phone calls from Cashplus while he was in hospital. This isn't typical in cases of identity theft.
- The fact that Mr C has provided medical evidence that he lacked capacity at the time may mean he simply forgot he had the credit card account.

Our investigation so far

The investigator who considered Mr C's complaint said that on balance she felt Mr C took out the credit card so she could not reasonably ask Cashplus to remove the negative marker. In summary she said:

- Most of the details provided on the application for the credit card matched Mr C's genuine details. Whilst the email address was slightly different to the one this service holds on file the investigator didn't think it made sense for a fraudster to make an email address so similar.
- The phone number on the credit card application was Mr C's genuine number and calls had been made to and from this number to Cashplus. This includes a call in which the caller said they were in hospital but were aware of the payment due date. Mr C has said he was in hospital at the time.
- There was no explanation for why an unknown third party had access to Mr C's card and PIN that were mailed to his home or registered business addresses.
- The main goal of a fraudster is to maximise financial gain, but the account was used sensibly for some years and balances were paid.
- Businesses Mr C was involved in were linked to some of the accounts.

Mr C didn't agree with the investigator. He maintained that he didn't open the credit card account or any other accounts with Cashplus. Mr C made the following points:

- Cashplus hasn't complied with DISP rules (1.4 and 1.5.2A) in respect of investigating a complaint competently and diligently and communicating in a way that is clear, fair and not misleading. Neither has it complied with its obligation to treat him fairly.
- Identity theft began in 2012 and by 2013 he was admitted to hospital with a severe depressive illness and anxiety following attempted transactions of £20,000 on another card with a different financial business and finding out about ten current accounts with another bank on his credit file. There were also multiple mobile phone accounts, transactions made on cards including a wedding dress in Florida and bills from businesses Mr C had never heard of.
- His Blue Badge, statements and cheque books went missing and items he expected to receive in the post didn't arrive. As a result, Mr C says he had to dismiss his cleaner.
- Others have had access to his mobile phone.
- Cashplus has not treated him, as a vulnerable customer, fairly.

I issued my provisional decision on 26 January 2022 in which I provisionally asked Cashplus to remove any negative markers in respect of the credit card account (or any of the other accounts taken out in Mr C's name before 2018, if applicable) from his credit file and pay him £350 compensation. I have pasted below what I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I don't consider Cashplus has treated Mr C well by completing a review and accepting the credit card account was opened fraudulently and subsequently reversing this decision without demonstrating it had considered any new evidence. Cashplus say it is unable to say why the original decision that the account was opened fraudulently was made as the staff member who dealt with it has now left.

Whilst I consider Cashplus should have completed a thorough investigation from the outset, I'm not persuaded our rules say Cashplus cannot reconsider its position. Mr C has referred to DISP 1.5.2A in support of his belief that Cashplus can't do so, but the relevant rule clarifies when matters are considered to be resolved for the purpose of those complaints that are resolved in a short timeframe (summary resolution). It doesn't say a financial business is unable to change its mind. The impact this has had on Mr C though can't be underestimated and I will return to it later in my decision.

This case is made more difficult because of the passage of time. Cashplus says that given the time that has elapsed certain information is no longer available (including call recordings, email communications with Mr C and statements issued). And Mr C's health means he's found it more difficult to provide relevant information. I'm grateful to Mr C for providing the information he has.

From the evidence Mr C has provided I'm satisfied he has repeatedly been the victim of identity theft from 2011 (or earlier) to 2021. I'll set out the evidence that leads me to this conclusion.

- *Mr C has provided this service with a letter written in July 2015 from a treating consultant psychiatrist who had seen Mr C regularly from 2010. This letter was written to support an insurance claim but contains information relevant to this case. It discusses Mr C's condition and explains that he, "has over the years been at the extreme end of severity of depressive illness". The consultant also says in the letter that,*

"In 2011 I was aware that [Mr C] had become a victim of identity theft, which provoked huge complications in his personal/financial life. Independently I had spoken to [Mr C's] mother who confirmed that this was indeed the case."

The psychiatrist discussed Mr C's admission to hospital from August 2014 and also mentions a previous admission but doesn't specify dates.

- *Mr C has provided a credit agency email dated February 2013 stating it has been contacted by four financial businesses requesting the deletion of searches completed in January and February 2013 that Mr C disputed and saying that one of them had deleted an account started in 2008 that Mr C disputed.*
- *Mr C has provided a letter from Action Fraud that confirms he reported two incidents of identity theft in February 2013 and February 2014. The letter goes on to say that three different banks refunded Mr C. So it's clear that around the time the credit card account was opened with Cashplus a number of other lenders made their own investigations and concluded that Mr C's identity had been stolen.*
- *I've seen evidence of a Cifas protective marker in August 2018 and four victim of impersonation entries in respect of different financial businesses dated November 2019.*
- *Mr C has sent this service his current victim of impersonation loadings in respect of identity fraud in March and August 2021 relating to a credit card and mail order.*
- *I've also been provided with a letter from a bank dated May 2021. This letter states that Mr C's personal information had been used for personal banking and credit facilities. The letter confirmed that the applications had been cancelled, outstanding balances removed, and credit reference agencies notified.*
- *Mr C has provided an email from a credit reference agency (date not clear) which said, "Your phone number is being illegally published and sold online".*

So, it seems to me, that Mr C was in a vulnerable position at the time the Cashplus credit card was applied for and that one or more people were using his personal information without his consent both before and after the application. It may well be that there is more evidence, but I understand it is difficult for Mr C to provide it. I consider though that what he has provided is persuasive.

Turning to the evidence Cashplus has relied on, the address provided on the credit card application is not the address shown on the copy driving licence Mr C has provided. But I note that when he wrote to Action Fraud in 2016 Mr C quoted the same address as that on his driving licence but asked for correspondence to be addressed to the address on the

credit card application. So it appears Mr C was using more than one address which may explain why he did not receive cards and PINS (as well as the fact he was admitted to hospital for a substantial period from August 2014). I've also noted that three different addresses have been used across the five or six accounts Cashplus say Mr C held and four different email addresses. I consider this to be unusual.

I appreciate that the mobile phone number provided on the credit card application matches the number provided by Mr C to this service and that Cashplus has evidenced that calls were made to and from this number. Whilst in many cases this evidence is quite persuasive, I'm conscious of the fact no recordings of the calls are available to confirm that the calls were made by or to Mr C. It's also clear Mr C has experienced a lot of health problems and been hospitalised on several occasions meaning he may not have had full control of his mobile and that another person(s) could have made and received some of the calls. I note that in response to the investigator's opinion Mr C said that others had access to his phone.

I accept that payments were made to the Cashplus credit card account for a period of time and that the payments came from an account in Mr C's name. But given the extent of the identity theft Mr C was a victim of I'm not persuaded this means Mr C was controlling any account the payments were made from.

On balance, I'm persuaded that Cashplus' initial assessment of Mr C's complaint was more reasonable and that on the balance of probabilities he was the victim of identity theft when the Cashplus accounts were taken out. Given this finding, I'm persuaded that Cashplus should remove any negative markers in respect of the credit card account (or any other account) from Mr C's credit file. Cashplus has already written off the balance so I don't need to say anything more about it.

Cashplus' reversal of its decision and lack of explanation for it to Mr C has had a significant impact on him at an already very difficult time. I have been provided with medical evidence which discusses the stress the identity theft and dealing with it has caused Mr C. Taking everything into account I consider Cashplus should pay Mr C £350 to compensate him for the additional stress and inconvenience its actions caused him. This is in addition to the £100 previously paid. I appreciate Mr C believes Cashplus should pay a significantly greater sum but must bear in mind that the person or persons who stole Mr C's identity are responsible for the majority of the stress and upset Mr C has experienced.

Mr C said my findings were acceptable to him. He pointed out that he has a lot of documents but is mindful of the impact a protracted period of correspondence would have on his physical and mental health.

Cashplus didn't accept my provisional findings. In summary, Cashplus said:

- My findings are based on the fact Mr C has raised identity theft with other financial businesses, and my dismissal of the evidence in respect of email addresses, telephone numbers and calls is speculative.
- Even if it's accepted that accounts were taken out by another in Mr C's name, the pattern of spending doesn't fit that of a fraudster.
- It accepts Mr C has provided evidence of his state of health, but this doesn't mean his identity was stolen. Cashplus noted it approached a debt charity which advised him that even if a customer is in poor health, they still owe a debt - and credit reporting can prevent further vulnerability. Cashplus stresses it is concerned about the impact on Mr C and not the compensation.
- Its evidence about calls was dismissed and, given the passage of time, recordings haven't been retained. This service allowed the complaint to be considered out of time and so it is unfair to use the absence of evidence against Cashplus.

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.

After carefully considering the responses to my provisional decision I have reached the same conclusion that I set out in it and for the same reasons. I have copied the findings of my provisional decision above so won't repeat them here.

I accept that the investigation of this complaint has been made harder by the passage of time and understand why Cashplus no longer has call recordings. But our rules allow us to consider a complaint outside of our usual timescales in exceptional circumstances and another ombudsman has determined that they apply in this case. So I need to make a decision based on the limited evidence that is available. I also understand Cashplus' point that my findings involve a degree of speculation – as do Cashplus' arguments in this case. But in deciding what I consider to be more likely in this case I've mainly relied on evidence.

The evidence Mr C has provided doesn't just demonstrate that Mr C has raised identity theft with other financial businesses at the relevant time and beyond, it shows other financial businesses accepted that Mr C was a victim and took steps to put matters right. I think this is what Cashplus needs to do now.

I understand Cashplus' concerns about removing credit markers and the potential impact on Mr C. But if I'm satisfied on balance that Mr C is a victim of identity theft then this is the right and fair outcome.

Overall, and for the reasons set out in my provisional decision and reproduced above, I'm persuaded the evidence demonstrates it's more likely than not that Mr C didn't apply for a credit card or any other account with Cashplus and instead was the victim of identity theft.

My final decision

I require Advanced Payment Solutions Limited trading as Cashplus to:

- Remove any negative markers in respect of the credit card account (or any other account taken out in Mr C's name before 2018, if applicable) from his credit file.
- Pay Mr C £350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 April 2022.

Jay Hadfield
Ombudsman