

The complaint

Mr T complains that Advanced Payment Solutions Limited trading as Cashplus ('Cashplus') failed to refund money he lost as a result of a scam.

What happened

What Mr T says

Mr T was researching cryptocurrency investment on the internet following a recommendation from a TV celebrity. He identified an investment company who I'll refer to as G and completed a form on their website giving his details. Mr T later received a call back from G and discussed investing in cryptocurrency. Mr T says he received a brochure and professional looking documentation from G. Mr T explained through his representative that he wasn't guaranteed a profit or a set rate of return.

Mr T carried out a check on a review website and saw that G had positive reviews. Together with the celebrity endorsement and the high ranking that G achieved on his search engine persuaded him that G were a legitimate investment company. Mr T said he'd been required to send his identity documents to G which helped persuade him that they were carrying out security checks, which a legitimate merchant would normally do.

When Mr T's account was being set up, he was persuaded to download a software package which gave G access to Mr T's computer. An account with a legitimate crypto currency merchant (who I'll refer to as M) was set up in Mr T's name. Mr T confirmed he sent funds from his Cashplus account to an account in his name held with M. G used the downloaded software to move Mr T's money onwards from M to accounts held by the scammers.

Mr T was first asked to invest £10,000 but couldn't afford that much at the time, so he sent smaller payments over several months. The table shows the payments from Mr T's account and the "profit" from his investment.

Date	Amount
20/01/21	£599.81
02/02/21	Receive "profit" £78.50
02/02/21	Receive "profit" £28.50
05/02/21	£2,400.00
26/02/21	£2,000.00
17/03/21	£5,000.00
25/05/21	£4,571.00

Total Loss	£14,463.81
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Shortly after making his first payment, Mr T said, *“It did take a few weeks but I started to make about 10% profit which I thought was an extremely plausible amount.”* Mr T was encouraged to take his profits by the scammers and two small payments totalling £107.00 were made to his Cashplus account from M.

Mr T was contacted weekly by the scammers and dealt with various individuals who sent him regular updates by email including performance figures showing his investment was growing. They also spoke with him about non-financial matters which Mr T believes was to build his trust in them. Mr T was also given an online account that he could access showing how his investment was performing.

Mr T was encouraged to invest more to achieve better returns and in March he doubled his investment with a further £5,000.00. After reviewing the performance of his funds, he arranged with G to cash in his investment. Prior to releasing the funds, G told Mr T that he was required to pay a 20% fee for various costs related to his investment.

Mr T later paid this fee (£4,571.00) and a short while later experienced various difficulties that prevented him from receiving his final investment. G made various excuses about why he couldn't receive his funds and it was then that Mr T realised he'd been scammed. He contacted Cashplus about the situation and asked for a refund.

What Cashplus say

Cashplus declined to refund Mr T arguing that he'd made the payments himself. They also declined to process a Chargeback request due to the way the payments had been made and said that Mr T had received the service he'd paid for with M. Mr T complained about Cashplus's approach and they once again looked into the circumstances but declined to change their position.

Our investigation so far

Mr T then brought his complaint to the Financial Ombudsman Service for an independent review. After considering the information, the investigator thought that the earlier payments weren't unusual, but the £5,000.00 payment stood out and Cashplus missed an opportunity to prevent the scam. She thought that Mr T was partially responsible for his loss and recommended that Cashplus refund 50% of the last two payments plus interest.

Cashplus disagreed and asked for a further review of the complaint. They stated that:

- The transactions were sufficiently spaced apart, so it didn't register any concerns.
- Mr T completed his due diligence.
- The £5,000.00 payment was similar to other deposits made by Mr T and followed a similar pattern to the other payments to M.
- Cashplus don't believe they missed any opportunities to stop the payments.

Mr T's complaint has now been passed to me for 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.

I was sorry to hear of Mr T's loss and the impact this scam has had on him. The first matter I need to address is the authorisation of the payments. It's common ground that Mr T sent the payments from his Cashplus account to the account in his name with M, before they were then transferred to another account by G. So, even though he didn't intend to pay a fraudster, the payments were 'authorised' under the Payment Services Regulations. Cashplus had an obligation to follow Mr T's payment instructions, and Mr T is presumed liable for his loss in the first instance. But that's not the end of the story.

Cashplus also has to be on the lookout for, and help to prevent, payments that could involve fraud or be the result of a scam. Although, there has to be a balance struck between Cashplus identifying payments that may indicate a customer is potentially at risk of financial harm and then responding appropriately to those concerns – and ensuring minimal disruption to legitimate payments.

In this case, I'm not satisfied that Cashplus should have been concerned until Mr T made the £5,000.00 payment, that's because:

- There isn't enough about the first three payments, either by themselves, or in combination, that makes them sufficiently out of character or unusual whereby I'd expect Cashplus to have identified a potential risk of fraud or a scam.
- The first three payments weren't significantly higher than payments Mr T had made on his account, noting a previous payment of £1,379.00.
- M was a legitimate crypto broker.

By the time Mr T made his £5,000.00 payment to M, this type of crypto investment scam was well established, and I'd expect Cashplus to have known about it and how, in general terms, it operated. This particular scam often utilised legitimate crypto brokers to receive scammed payments into accounts in their customer's names. It was apparent from the information available to Cashplus at the time, that Mr T had increased his payments to M, virtually doubling the size of the previous highest payment. Whilst M are a legitimate crypto broker, I think this pattern of increasing payments should have raised concerns with Cashplus.

Cashplus believe that as these payments were funded from incoming payments by Mr T and they were spread apart, that they didn't have any reason to stop them. Whilst I understand there wasn't a rapid movement through the accounts, which is often associated with a scam, the virtual doubling of the outgoing payment to M should have raised concerns with Cashplus. If they'd contacted Mr T about the arrangement, I think it's likely that the scam would have been uncovered. That's because Mr T wasn't given a cover story, so would have no reason to answer Cashplus's questions dishonestly.

General questioning would likely have revealed typical scam factors including:

- the use of a celebrity name to promote crypto profits.
- The use of software to take over Mr T's computer.
- Moving funds through M by G to another account which Mr T hadn't got access to.
- The release of a small payment back to Mr T (of his own money).

So, I think the last two payments could have been prevented if Cashplus had intervened at that point.

Whilst I think that Mr T should receive some refund for the scam, I also think that he was partly responsible for his own losses. There were various aspects of the arrangement that were unusual, and I think should have raised more suspicion from Mr T prior to committing his own funds, including:

- A lack of reasonable checks to determine if G were a legitimate merchant.
 - Mr T said *“I also looked on (review site) and it came across with very positive reviews, which made me feel that other customers have had positive experiences with the company”*

I've checked this site and prior to the first payment made by Mr T there were both positive and negative reviews, including accusations that G were involved in scamming people. Nearly all the positive reviews were from accounts that had been “invited” to post their review. I wouldn't describe the overall picture they presented as “very positive”, rather something to be approached with caution.
 - Apart from the review website check, Mr T seems to have relied on the celebrity endorsement and the high ranking achieved on a search engine to persuade himself this was a legitimate opportunity. I appreciate a celebrity endorsement may well have encouraged Mr T that G were legitimate, but Mr T doesn't seem to have questioned the overall scheme he was being asked to invest in.
 - There were inconsistencies related to the two business addresses contained in the emails Mr T received and on G's website. If Mr T had carried out any research on the information he was being given about the company, he may well have found that one is a retail shop and the other doesn't appear to have any record of G being registered at it.
 - G don't appear to be authorised by the FCA.
 - Mr T said he'd sent his identity documents to G but unfortunately, he's been unable to send any evidence to show this took place.
- I don't think the story he was given by G to pay a 20% fee to release his investment was plausible, especially when this significant payment hadn't been mentioned prior to the request to withdraw the profits.
- Mr T appeared to have accepted that it was usual to give control of his computer system to relative strangers, effectively giving them access to all the information contained on his computer.

When Mr T brought his complaint to our service, he explained that he'd made the investment with G because he'd lost earlier savings and his pension. He wanted to earn enough funds for a medical treatment, to help pay towards his mortgage and to earn money for his retirement. So here it's apparent that Mr T was risking his remaining funds in order to earn enough to meet his current and future needs. I don't think it would have been unreasonable for him to carry out some research into the scheme he was presented with given the high risk of losing his remaining funds. I wouldn't expect Mr T, who I accept was an inexperienced investor, to have carried out a deep forensic examination of G, but I do think the evidence suggests he was less than rigorous when he allowed G to take his funds.

Mr T made his payments over a period of a few months which was understandable given the level of funds he had available at the time. He's also said via his representative that: “... he

sent it (the first two large payments) over the 2 transactions to give himself a little more time and reassurance that the company was genuine.” By delaying the payments, Mr T had given himself the opportunity to be as sure as he could that G were legitimate and from his representative's comment, it appears he was also somewhat concerned that G weren't genuine. Given this I would have expected Mr T to conduct some form of additional checks. In his representative's submission it was commented that Mr T had done a lot of research into crypto investment, but this didn't appear to have included much in the way of checks about being scammed or G's legitimacy. So here, I think that the losses should be equally shared between Cashplus and Mr T.

Recovery

I've also considered Cashplus's actions regarding the recovery of funds once they were made aware of the scam. Here, the funds were removed by the scammers through M's account to their own and no doubt onwards to other accounts. What that meant for Cashplus is that they had no real options to try and recover the funds apart from a Chargeback request.

This system can be used when payments are made by card, as they were here. It's a voluntary system governed by the card operator and subject to strict rules. Here Mr T received the appropriate service from M because his funds were sent to his own account with them. Unfortunately, the onward movement of his funds by G wasn't something that Cashplus could use to raise a Chargeback. I think any application was likely to fail, so I'm satisfied it was reasonable for Cashplus not to make one.

Putting things right

In order to settle this complaint Cashplus should:

- Refund Mr T 50% of the last two payments (£4,785.50). This account doesn't normally attract interest, therefore no additional amounts are included here.

My final decision

My final decision is that I uphold this complaint against Advanced Payment Solutions Limited trading as Cashplus and require them to settle the complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 December 2022.

David Perry
Ombudsman