

The complaint

Mr S complains about the actions of Advanced Payment Solutions Limited trading as Cashplus when he was the victim of a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In 2020 Mr S was sadly the victim of a scam. He was contacted by a scammer representing a business I'll refer to as H. H told Mr S that they could help him recover his loss from a previous unregulated investment he'd been involved with.

Ultimately Mr S paid money into two accounts held with Cashplus. At the time he believed both to be 'escrow' accounts in his name that H had arranged for him. Mr S paid around £16,000 into an account with the account number ending 071. He was also provided with statements for this account from H which showed around £57,000 had been credited into it.

The second account had an account number ending 290 and in December 2020 Mr S paid just over £8,500 into this account. He believed this was to be held as security regarding a loan note for £120,000 which had also been paid into that account.

When Mr S later realised he'd been the victim of a scam, he reported this to Cashplus. Cashplus confirmed that the statements for both accounts that H had shared with him were fabricated. They also confirmed that only the account ending 290 was in Mr S' name. Ultimately Cashplus declined to offer any refund and the matter was referred to our service.

One of our Investigators recommended that the complaint should be upheld. In summary she said that as Mr S had been reimbursed for the loss in relation to account ending 071 by the bank from which he sent the money, then there was nothing more that needed to be done.

But in relation to the account ending 290, she concluded that whilst this had been opened in Mr S' name and with his knowledge by H, he wasn't in control of it. She concluded the outgoing payments from that account (which represented essentially all the money Mr S had paid into it) were unauthorised. And as such, she recommended that Cashplus should reimburse Mr S. Cashplus disagreed, they believe Mr S was grossly negligent and so it is fair for them to hold him liable for those transactions. Mr S also highlighted that his payments into that account originated in a US dollar based account, he would like any refund to take into account the difference in exchange rates.

As agreement couldn't be reached, the complaint has come to me to decide.

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.

Account ending 290

In line with the Payment Services Regulations 2017 (PSRs), Mr S isn't liable for payments he didn't authorise – unless he failed with intent or gross negligence to comply with the terms of the account or keep his personalised security credentials safe. It's not in dispute that the outgoing payments were properly authenticated. But to be authorised, the PSRs also require Mr S to have consented to the payments. They also set out how consent is given; this isn't open to interpretation. It must be given in the form, and accordance with the procedure, agreed between Mr S and Cashplus. Essentially that means Mr S would have consented to the payment if he, or someone acting on his behalf, completed the agreed steps for making a transaction.

Overall, I'm persuaded neither Mr S, nor someone with his permission, completed all the steps required to have consented to the payments – meaning they were unauthorised. And these unauthorised payments caused him a loss. That means Cashplus is liable for the payments unless Mr S failed with intent or gross negligence. Cashplus don't seem to be arguing that the payments were authorised rather they believe Mr S' actions amount to gross negligence.

I consider it clear that Mr S didn't intentionally fail to keep his account details secure. Nor am I persuaded his actions showed such a significant degree of carelessness to constitute gross negligence. At the relevant time Mr S was in the midst of a sophisticated scam. He shared sufficient information and gave his permission to enable the opening of the account in his name. And when he received the debit card in the post, he also shared the details of this with H. This enabled the payments to take place. But, I don't think I can say this amounts to gross negligence, he was taken in by a plausible scam and believed he was dealing with a legitimate firm which had been incorporated on companies house for a number of years (something Mr S says he'd checked prior to engaging with H). He therefore believed (not unreasonably) that he was dealing with a legitimate entity.

The two payments in question are £3,670 on 17 December 2020 and £4,932 on 18 December 2020. And I think it is fair and reasonable for Cashplus to refund Mr S with those amounts. I also think they should add 8% simple interest to be calculated from the date of each payment to the date of settlement to compensate him for being without the use of those funds.

As I've mentioned above Mr S has said that the incoming payments to account ending 290 originated in US Dollars and he would like to be reimbursed an equivalent amount taking into account the difference in exchange rate between December 2020 and now. I've considered this, but the basis of me directing Cashplus to refund these payments is under the provisions of the PSRs due to them being unauthorised. As such, I consider the correct amount for Mr S to receive back to be the amount of the unauthorised payments themselves, not the original source and currency of his incoming payments to the account.

Account ending 071

I agree with our Investigator that as the loss in relation to the money Mr S credited to account ending 071 has already been refunded by another bank, there isn't a basis upon which I can direct Cashplus to do more on this point.

Summary

I'm satisfied that the statements Mr S was given by H were falsified and that there weren't genuine credits (beyond those from Mr S himself) made into either account. So I don't think Cashplus need to do more than I've already mentioned above.

Mr S also mentioned his concern about the impact of this on his credit file. I've not seen any evidence to support that his credit file has been negatively impacted by anything Cashplus did or didn't do. So again, I don't think they need to do more.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint.

Advanced Payment Solutions Limited trading as Cashplus must pay Mr S £8,602. They should add to this 8% simple interest (yearly) to be calculated between the date of each of the unauthorised payments which make up that amount, and the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 February 2023.

Richard Annandale
Ombudsman