

The complaint

N, a limited company, complains that Advanced Payment Solutions Limited trading as Cashplus Bank won't refund payments that it didn't make.

What happened

The director of N contacted Cashplus Bank to dispute a number of payments from its account which started in April 2022. He was unhappy to be told that the merchant involved had a subscription from N's account. The director says he tried to access the websites involved to raise the issue with the merchant as Cashplus Bank had asked but that there were no matching details.

Cashplus Bank said it wouldn't be refunding this money and that it had declined N's fraud claim. A member of its fraud team had called the merchant and it had been confirmed that it had a record of a subscription matching the details for N. And it told Cashplus Bank the two website names that were involved. It added that the merchant had said that there were matching profiles, and it should be possible to access these with a 'forgot your password' option. The easiest way to cancel a subscription was to cancel the card. This had already been done for N and as there had been no further payments it considered the matter to be resolved.

Our investigator recommended that the complaint be upheld and that all the payments other than the first for £0.99 be refunded with eight per cent simple interest per annum. There was no explanation of how the merchant obtained N's details other than from N. And this wasn't a typical pattern of fraud by an unknown third party. So, she thought that N had authorised the first payment. But as the further payments were taken under a continuous payment authority (CPA) she'd have expected the merchant to be able to show that N had positively agreed to the amounts and frequencies of payments. And that the key parts of the CPA had been displayed clearly and not just hidden say in the terms and conditions. This was in line with guidance originally issued by the former Office of Fair Trading but since endorsed by the Financial Conduct Authority. Cashplus Bank didn't have any evidence to support whether the merchant had followed this.

She subsequently confirmed with Cashplus Bank that the total amount of payments involved including the one for £0.99 was £541.49. N didn't have any further comments to make about the proposed resolution.

Cashplus Bank didn't agree and wanted an ombudsman's decision. It maintained that it had considered a fraud claim for N. And that N had a relationship with the merchant as we'd accepted too, and this fraud claim was declined. The issue of the CPA would be a 'dispute' and it could have provided N with guidance about raising that as the basis of the claim. This could no longer be done because the timescales for a chargeback had expired. It said that it was currently locating the call with the merchant and would send this as soon as available.

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 note that our investigator first asked Cashplus Bank in October 2022 for a recording of the call its fraud department had with the merchant. She further mentioned when she issued her view that she'd accepted there was a record of N at the merchant based on call notes. But again, she'd said that this was insufficient to confirm that a CPA had been agreed.

The issue here is whether N authorised all these payments. I need to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated, say with card details. And if they weren't authorised N wouldn't generally be responsible for them especially as this is a distance contract.

Our investigator has accepted that based on the fraud notes the merchant had some details that corresponded to N. It is unclear what these were. And she took the view that as there was no evidence of other attempted payments or of third-party fraud that these most likely came from N. The director of N hasn't disagreed with the conclusions of her assessment. And I won't be going behind that here. I note though from N's bank statement that the same reference number for payments seemed to be associated with two different payee names. And from the case notes from Cashplus Bank that the 'trading names' as far as the websites were concerned were also different again. I'm not clear which merchant the fraud team spoke to. But as far as the director of N is concerned I can see the potential for confusion when many different names are involved. And so, I don't see that this undermines his reliability as far as what he says about not agreeing to any subscription.

Reference has already been made to relevant consideration as far as a CPA is concerned. Even if I had the call recording, if that wasn't supported by some documentation showing that N had clearly consented to ongoing payments I don't know that it would necessarily have resolved things. In any event Cashplus Bank has had ample time to provide any evidence, might reasonably have been expected to have this when it dealt with the claim and has since been reminded of its potential importance.

I'm not satisfied on the evidence that N consented to a CPA and so authorised the payments following that for £0.99.

I appreciate that there may have been the opportunity to raise a chargeback. But it was always clear that N was denying any subscription. And the outcome of the issue of authorisation isn't one bound by chargeback rules or those timescales. How Cashplus Bank categorised and investigated the case was a matter for it. But in any event I have made a finding on authorisation having considered what is most likely.

The payments after the one for £0.99 come to a total of £540.50 (£541.49 less £0.99). These should be refunded to N with simple interest of eight percent per annum as I find Cashplus Bank can't reasonably hold N responsible for them.

My final decision

My decision is that I uphold this complaint and I require Advanced Payment Solutions Limited trading as Cashplus Bank to

- 1) Refund the payments totalling £540.50 to N.

- 2) Pay N simple interest of eight per cent per annum on each of those payments from the date it was debited to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 22 February 2023.

Michael Crewe
Ombudsman