

The complaint

Company R complains that Advanced Payment Solutions Limited, trading as Cashplus Bank ("Cashplus") won't refund £18,000 it lost to a safe account scam in June 2022.

Mr C has brought this complaint on behalf of Company R as its director. For ease of reference, I will refer mostly to Mr C throughout this decision.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief summary, Mr C fell victim to a scam after he was called by someone purporting to be from his bank ("the scammer"). Mr C was told that his account had been compromised and that he needed to transfer his funds to a safe account as his device had been infected with malware.

The scammer asked Mr C if he held accounts with any other banks, as they said he would need to move those funds as well. He said he had an account with Cashplus, where he was then under the impression that he had been put through to someone from its fraud department. He was subsequently instructed to move the funds held in R's Cashplus account, where Mr C transferred £18,000 to another account he'd been told had been set up in his name.

Mr C discovered he had been scammed and reported the fraud to Cashplus. It was able to recover £1,461.36 which it paid back into R's account. However, it said it would not reimburse the balance of £16,538.64 lost as Mr C had authorised the transaction. Mr C complained that this was unfair, and also said he was unhappy with the poor communication received. Cashplus apologised for any frustration caused by its poor handling of the matter and offered £50 compensation. Unhappy with this, Mr C referred the matter to this service.

Our investigator upheld the complaint. He was satisfied that the £18,000 payment made on 7 June 2022 ought to have flagged as unusual, and that Cashplus could have revealed the scam if it had intervened and spoken to Mr C. However, he also thought that Mr C should share liability for his loss as a result of his own contributory negligence. Both Cashplus and Mr C disagreed, so the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator and have decided to uphold it.

It isn't in dispute that Mr C authorised the disputed payment he made from R's account to the scammer. The payment was requested by him using his legitimate security credentials provided by Cashplus, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether Cashplus should have done more to prevent Mr C from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

Cashplus submits that the £18,000 payment would not have appeared unusual. It says that prior to the scam, R had received high value payments into the account, with several payments being over £10,000 in value. However, I don't consider payments being *received* into an account is necessarily indicative of what can be considered normal when it comes to money being *spent* from the account. It is entirely possible for it to be usual for an account to receive large transfers, but unusual for it to make them.

The largest payment I can see being made from R's account prior to the scam was for £9,000, which was a transfer to Mr C. So an £18,000 transfer marked a significant escalation in spending for the account. It was also being made to a new payee and drained the account of 98% of its funds. Therefore, I'm satisfied there were enough 'triggers' in this case to have alerted a responsible regulated firm such as Cashplus that R's account was being subjected to unusual and uncharacteristic activity. There were reasonable grounds to suspect a fraud or scam, and therefore justify an intervention (such as phoning him in order to ask questions about the nature and purpose of the payments).

If Cashplus had asked Mr C what the payments were for and the basic surrounding context, I consider it likely he would have fully explained what he was doing. He would've explained that he had been instructed by Cashplus to move the money to a safe account. This would have put Cashplus on notice that he was at risk of financial harm, and it could have explained that it hadn't contacted him, and that it would never ask him to move his money to a "safe account". If Cashplus had given such a warning, I believe that Mr C wouldn't have proceeded with the payment, and his loss could have been prevented. So, but for Cashplus's failure to act on clear triggers of potential fraud or financial harm, Mr C would probably have not lost the money from R's account. I will therefore be asking it to reimburse the payment.

Contributory negligence

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). I have duly considered whether it would be fair and reasonable for Mr C to bear some responsibility by way of contributory negligence, which I'm satisfied he should in this case.

Mr C says he carried out appropriate due diligence at every step of the scam. However, I'm not persuaded that he did. It isn't clear, for example, what checks he carried out to ensure the callers were genuine. Mr C has said that the calls were professionally executed and made in highly plausible context, from a number that appeared to be genuine. He says that he questioned the authenticity of the caller, but just said they outlined to him that the call was genuine. I don't think this was enough to have reasonably believed that he was dealing with a genuine caller from Cashplus. Mr C hasn't said that any caller verification checks were carried out, for example, which you would expect from every call being made to or from a genuine bank. It also seems implausible to think that a bank would also know that his phone had been infected with trojan virus malware.

Mr C also says the account he was transferring the money to was in his name, and he thinks the scammer was able to manipulate something on his screen to show this. However, I've seen no evidence to suggest that the recipient account was held in Mr C's name, or that this would have been the name of the payee he was sending money to. So, I don't think there

was enough for him to reasonably believe that this was where his money was going.

I note that a payment Mr C had previously attempted from an account with another bank had also been blocked as part of the same scam prior to the payment being made from his Cashplus account. If he thought he was transferring money at the instruction of the bank, I think it ought reasonably to have given him significant cause for concern that the same bank then blocked the transaction it had told him to make. However, it doesn't appear that any Mr C acted on any of these concerns or obvious warning signs to verify who he was talking to, or what he was being asked to do. If he had taken further steps to verify these things, he would have likely discovered that he wasn't talking to Cashplus. As a result, I'm satisfied that his negligence has contributed to his loss, such that it would be fair and reasonable for him to share liability with Cashplus in these circumstances.

Compensation

Mr C says he is unhappy with the poor service he received from Cashplus and does not consider its offer of £50 compensation to be commensurate to the distress and inconvenience he has suffered. Based on what Mr C has said, I can appreciate why he would have been frustrated. However, I have to consider that the complainant in this case is not Mr C himself; it is Company R. So, compensation can only be awarded based on any *inconvenience* caused to the company. I cannot make any award for distress and inconvenience caused to Mr C personally in these circumstances, as he is not the complainant. And having considered the likely impact and inconvenience caused to R as a result of Cashplus's handling of matters, I'm satisfied that £50 compensation is fair and reasonable.

My final decision

For the reasons given above, I uphold this complaint and direct Advanced Payment Solutions Limited trading as Cashplus Bank to:

- Refund 50% of the outstanding amount R lost to the scam (taking into account any funds Cashplus was able to recover).
- Pay 8% simple interest per year on this amount from the date of loss to the date of settlement.
- Pay £50 compensation for the inconvenience caused by its handling of the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 30 November 2023.

Jack Ferris
Ombudsman