

The complaint

A company, which I'll refer to as S, complains that Advanced Payment Solutions Limited (trading as Cashplus Bank) won't refund transactions it didn't make.

Ms M, who is a director of S, brings the complaint on S's behalf.

What happened

- Ms M was contacted by someone pretending to be from Cashplus, who convinced her to share some of S's personalised security details. As a result, fraudsters were able to make two payments from S's account for £3,190.54.
- Cashplus declined to refund these, so Ms M brought her complaint to our service to investigate.
- On 21 March 2023, I sent a provisional decision upholding S's complaint. I wasn't persuaded Ms M failed with gross negligence to comply with the terms of the account and to keep S's personalised security details safe. So, in line with the Payment Services Regulations 2017, I considered Cashplus liable to refund S.
- Ms M accepted my provisional findings. Cashplus disagreed and sent several call recordings it had between its staff and Ms M. In summary, it said:
 - Ms M provided several security details, despite the media coverage and education not to share information like this.
 - When Ms M was scammed before, Cashplus didn't ask for security details to refund the payments – so this should've raised alarm bells.
 - At no point did Ms M question the caller, so it maintains she failed with gross negligence.

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 considered Cashplus's response carefully, I've not changed my mind about the outcome to S's complaint. I'll address what I think are the salient points:

- I accept Cashplus and others have information available about how to avoid scams and what information it wouldn't ask for. But I don't think that means that everyone that does share security details has failed with gross negligence.
- Instead, it's necessary to consider gross negligence in all the circumstances of the

scam. And it's clear that this scam, like many others, was cleverly crafted – as Cashplus's own staff acknowledged in their calls with Ms M. For example, they already had information about Ms M, they used familiar security questions and hold music, as well as baffling Ms M with fake jargon – like fake crime references numbers and employee numbers.

- Most importantly – and clearly the key reason for Ms M's trust – was that the call appeared to come from Cashplus's number. I note from her previous calls with Cashplus that she wasn't told about this possibility.
- I recognise that when fraudulent transactions happened before and Cashplus genuinely called Ms M, they didn't ask for security details. But like I said in my provisional findings, I can understand how she wouldn't have remembered everything about this call – it happened around a month before. However, I can see how the overall context of the call – that she'd been scammed before and someone was trying to do the same thing again – made the call seem plausible to her.
- This isn't to say that Ms M acted perfectly reasonably. But, taking all the circumstances into account, I'm not persuaded she fell *so far below* what a reasonable would've done to conclude she failed with gross negligence.

So, I've not departed from my provisional findings. For completeness, I've included my reasoning again below.

- Cashplus accepted these were unauthorised transactions. However, in line with the Payment Services Regulations 2017 (PSRs), it refused to refund them because it asserts Ms M failed with gross negligence to comply with the terms of the account and keep her personalised security details safe.
- Our investigator considered these payments to concern distance contracts, so in line with the PSRs, they didn't think gross negligence was a relevant consideration. But as this concerns a company, the provisions related to distance contracts don't apply – they're only for consumers.
- So I have considered whether Ms M failed with gross negligence – or, in other words, whether she acted with very significant carelessness; seriously disregarded an obvious risk; or acted so far below what a reasonable person would've done.
- Ms M explained she received the call from Cashplus's number. She had recently received a call from someone claiming to be from Cashplus, but she didn't share information because the number didn't come up correctly. So when it did, she trusted the caller was from her bank. I can see why Ms M made that connection – after all, most people don't realise how fraudsters can spoof genuine numbers.
- She recalled being told that she'd been scammed again – and that to refund the payments, they'd need her to confirm her card details and to share two one-time passcodes they'd send to her phone. They'd then send her a new card.
- Around a month before, Ms M had been scammed where the payments were refunded and she'd a new card issued. While I accept they wouldn't have asked for information before, I think it's understandable she didn't recall the exact process. And overall, I can see why the general context of the call seemed plausible and familiar to her, and why she ultimately trusted this was Cashplus and shared the information.

- In saying this, I accept the messages with the onetime passcodes had details of the payments. But from my experience of complaints involving Cashplus, I understand the messages often refer to 'verifying' a payment – and don't always include a warning. Either way, in the heat of the moment, when Ms M trusted her bank and had been primed to expect the messages to refund the transactions, I can see how this didn't ring alarm bells. I don't think it meant she seriously disregarded an obvious risk when she shared them.
- It follows that I don't think Cashplus has shown Ms M failed with gross negligence. So I conclude that S isn't liable for the transactions and Cashplus needs to put things right – by refunding S's losses from these unauthorised transactions alongside interest to compensate it for the time it's been out of pocket.

My final decision

For the reasons I've explained, I uphold S's complaint. Advanced Payment Solutions Limited (trading as Cashplus Bank) must:

- Pay S the total of the unauthorised transactions, less any amount recovered or already refunded.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised transaction to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 28 April 2023.

Emma Szkolar
Ombudsman