

The complaint

A company which I'll refer to as M complain that Advanced Payment Solutions Limited (referred to in this decision as 'Cashplus') won't refund the money it lost in a scam. Mr M, who is a director of M, brings this complaint on M's behalf.

What happened

Mr M says that he received a text message from another bank he has an account with asking him if he'd made a transaction. He confirmed that he hadn't, and shortly afterwards received a call from the other bank during which he was asked if he had any other accounts. Mr M said he had an account with Cashplus and was told that this account might also be compromised. Soon after, Mr M received another call from someone who claimed to be from Cashplus. Mr M didn't know at the time, but the caller was a scammer. The caller asked Mr M to check the number he'd called from online to prove that he was from Cashplus. The number matched. Mr M was asked whether he'd made certain transactions and was advised that his Cashplus account had been compromised. The caller said an employee of Cashplus was thought to be responsible and the police were investigating.

Mr M was advised to move £21,000 from M's business account to another account with Cashplus in his name. He was then asked to make further payments to two other accounts. The reason for transferring funds to different accounts was because funds were being tracked by a fraudster at the bank and using multiple accounts would make it more difficult. Mr M was then asked to make a payment to someone he'd already paid - his brother, to ensure the funds weren't tracked internally. After the £21,000 payment the others didn't go through. Mr M called Cashplus while the scammer listened in and was coached about what to say. He agreed that only the £20,000 payment to his brother's account should be made and all other payments cancelled.

Mr M then made further online payments to his brother's business account (£8,500, £8,000 and £1,300). The £8,000 payment was also held by Cashplus but later released after Mr M made another call. Mr M's brother then transferred the funds (including the earlier £20,000) to account details provided to Mr M by the caller.

I have set out the position in a table (all transactions were on the same day – 27 July 2022). The amounts in bold are successful payments that haven't been recovered.

Time payment initiated	Time payment made	Amount	Account	Notes
11:54	11.54	£21,000	1 – payee name Mr M	Full amount recovered
12:00		£20,000	2 - payee name Mr M	Cancelled in call
12:05		£20,000	2 - payee name Mr M	Cancelled in call
12:11		£9,800	3 - payee name Mr M	Cancelled in call
12:21	13:25	£20,000	Mr M's brother's business account	

12:37		£4,000	Mr M's brother's business account	Cancelled in call
12:42		£9,800	4 - Named individual – not Mr M	Cancelled in call
13:50	13:50	£8,500	Mr M's brother's business account	
13:54	14:23	£8,000	Mr M's brother's business account	Released during subsequent call
14:25	14:33	£1,300	Mr M's brother's business account	
Total loss		£37,800		

Later that day, Mr M realised he was the victim of a scam and called Cashplus to report what had happened.

Cashplus didn't reimburse M the funds that were lost in the scam. It noted that it isn't signed up to the voluntary Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) and had intervened when an unusual payment was made but some of the answers provided by Mr M weren't correct. Cashplus went on to say it had done what it could to recover M's funds but had only been able to recover the initial £21,000 payment.

Mr M thinks Cashplus didn't do enough to protect him when the payments were made or to recover the payments. He asked Cashplus a series of questions in respect of the recovery of his funds, but Cashplus didn't answer them, saying his complaint had been passed to this service. Mr M was also unhappy with the service provided by Cashplus when he reported the scam. He has referred to the huge impact this scam has had on him personally and on his business.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld. She said the payments made by M were significant and out of character and although Cashplus said it had called Mr M about the second payment it hadn't provided a call recording. The investigator also didn't think Mr M contributed to his own loss as he was called from a spoofed number, was taken through security questions and the scammer knew about some of his transactions and knew details of his brother's account.

After the investigator issued her view Cashplus found the recording of the call it had with Mr M when the second payment was made. But the investigator didn't think Cashplus went far enough in this call as Mr M wasn't asked the purpose of the payment or why Mr M was sending payments to an account that he thought was in his own name when Cashplus knew this wasn't the case. And Cashplus didn't provide scam advice to enable Mr M to understand how scams of this nature work.

Cashplus didn't agree with the investigator's findings. In summary, it said it couldn't have done anything more to prevent the scam from happening and that it was clear Mr M wanted the payments to be made and had sufficient funds to do so. Although the £21,000 payment didn't flag on its systems as suspicious, subsequent payments did and Cashplus had a conversation with Mr M when he confirmed he wished to make payments to his brother's account. Cashplus say it asked appropriate questions and Mr M confirmed that he hadn't been approached by anyone who'd asked him to make a payment. Following this call Mr M made further payments online. Given its earlier interaction with Mr M, Cashplus felt there was no reason to contact him again about these payments.

As Mr M was unhappy with Cashplus' response the complaint has been passed 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.

The CRM Code doesn't apply in this case as Cashplus hasn't signed up to it.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Cashplus should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Cashplus acted fairly and reasonably in its dealings with Mr M when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

Did Cashplus act fairly and reasonably when it made the payments?

As I've explained above, I consider that as a matter of good practice Cashplus should have been on the lookout for unusual or uncharacteristic transactions. So I've first considered whether the payment requests Mr M made on behalf of M were unusual or uncharacteristic.

I've reviewed M's bank statements for the 12-month period before the scam payments. These show that the initial payment of £21,000 was unusual and out of character given previous account use and payment history. I say this because the largest payments from the account before the scam were two payments of £10,000 to well-known companies dealing with savings, pensions and investments. So a £21,000 payment to an individual payee stood out.

I can't say for sure what would have happened if Cashplus had intervened at this stage and asked Mr M questions about the payment. But given the intervention that subsequently took

place I consider it more likely than not that Cashplus wouldn't have done enough and could have prevented M's loss. But I've also noted that the first payment of £21,000 has been recovered in full and Cashplus did speak to Mr M about future payments. So I've focused on what happened when the subsequent payments were made.

Although Cashplus say these later payments weren't out of character I note that it held them for review and spoke to Mr M about them. So I think Cashplus did have some concerns and this is why it intervened. I think Cashplus was right to do so, given the nature of the payments Mr M was seeking to make.

I've listened to the calls Mr M made to Cashplus on the day the payments were made. Initially Mr M called Cashplus and said he was frustrated as he'd tried to make a number of payments, including two for £20,000 and payments for £9,800 and £4,000, but nothing had gone out. No questions were asked, and Mr M was told the payments would go through but if they didn't - he should call back.

Mr M made a further call as the payments had not been released. The advisor spoke to a member of the fraud department who questioned the fact Mr M had said he was making payments to his brother but the payee name was Mr M. The fraud team decided to speak to Mr M. During a short call Mr M was told that some payments had been flagged for additional security checks. He was asked some security questions to identify him and then the adviser went on to say,

"Can you just confirm that no-one has requested that you make these payments out of the blue, you've not received any phone calls or emails asking for the payment to be sent to any other account details."

Mr M said 'no' and that he was frustrated at the time it was taking to make the payments. He was asked if the payments were going to himself, and he said a couple were and some were to his brother's business account. The advisor questioned whether the account Mr M was sending the £9,800 payment to was in his name and Mr M confirmed that it was a new account he'd just opened up. The advisor noted that the payee name didn't match an account in Mr M's name and Mr M said he'd need to check that. The adviser then said,

"No-one has asked you to make any payment to any safe account or anything like that? No, you've not had your account compromised [inaudible] move money?"

Mr M said, "No, not at all" and then asked the Cashplus adviser to suspend all other payments and just make a payment to his brother's account of £20,000. No further questions were asked, and the payment was released.

I don't consider Cashplus went far enough in this call. Mr M had just made an out of character payment of £21,000. The purpose of the call was to discuss numerous payments Mr M had tried to make from M's account in a very short timescale to multiple payees. This behaviour is typical in safe account scams, as is being given a cover story about an investigation and it being important not to tell the bank what's happened. Whilst I wouldn't expect Mr M to know these things, Cashplus as the expert should have. Mr M had also told Cashplus that the account was a new account in his own name – which is a clear indication of a safe account scam. So I think Cashplus needed to go further and not just accept Mr M's answers at face value. Cashplus should have asked Mr M some probing questions to ascertain if he was at risk.

I'm aware that the payment Mr M asked Cashplus to process in that call wasn't to a new payee. Mr M's brother's business was an existing payee and M had made a payment of £336 to it in March 2022. I have records from the end of June 2020 and can't see any other payments. Given the previous payment of £21,000 and the other payment requests Mr M chose to cancel when he spoke to Cashplus though, and the points I've raised above, I still consider Cashplus ought to have intervened and challenged Mr M's responses. I consider it

would have been reasonable for Cashplus to have asked Mr M what the payment to his brother was for.

I'm confident that had Cashplus explained the common features of safe account scams including number spoofing and the need to keep funds safe and told Mr M that Cashplus would never ask him to do this or to lie, he wouldn't have gone ahead. I believe the fact he asked Cashplus to cancel all payments except those to his brother after its advisor told Mr M the account he was transferring to wasn't in his name supports this conclusion.

I asked Mr M why he needed to move funds out of his brother's account. He explained that that the scammers told him the fraudster they were trying to catch was monitoring his transactions and could still trace the funds to his brother's account.

I've gone on to consider whether M should share the responsibility for the loss. On balance though, I don't think it should. I say this because:

- Mr M received a call from a spoofed number which he checked. This persuaded him he was speaking to Cashplus.
- In the previous call with another bank Mr M was told to expect a call from a representative of Cashplus so the call he then received wasn't unexpected.
- Mr M said he was taken through security questions as he'd expect from his genuine bank.
- The scammer knew about some transactions from M's account that led Mr M to believe the call was from Cashplus.
- Mr M was led to believe M's funds were at risk and was put under pressure to act quickly. This is exactly how scams of this nature work. He wasn't allowed the opportunity to stop and think as the scammer stayed on the phone throughout.
- Mr M asked questions of the scammer, such as why funds needed to be moved from his brother's account, and was provided with an explanation that seemed plausible to him at the time - and whilst he was still under the spell of the scammer.
- In the calls Cashplus had with Mr M, he was never advised that Cashplus would never ask him to lie or move his money to a safe account.
- Mr M clearly believed he was acted on the instructions of his genuine bank and moved almost the entire balance in M's account in a few hours.

Overall, I'm satisfied M should be reimbursed the full amount lost in the scam.

Interest

All payments were made from M's current account so interest should be paid at the rate of 8% simple per year from the date of loss to the date of settlement

My final decision

For the reasons stated I require Advanced Payment Solutions Limited to:

- Refund M £37,800;
- Pay interest on the above amount at the rate of 8% simple per year from the date of loss to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 25 July 2023.

Jay Hadfield
Ombudsman