

## **The complaint**

A company, which I'll refer to as M, complains Advanced Payment Solutions Limited trading as Cashplus Bank ("APS") won't refund payments it didn't make or otherwise authorise.

Mrs C, a director of M, brings the complaint on M's behalf.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat everything here. In brief summary, in August 2022 Mrs C, the director of M, was tricked over the phone by scammers impersonating APS into providing details enabling them to make payments totalling £34,850 out of M's APS account.

APS recovered and refunded some of the money to M. Remaining unhappy, Mrs C referred M's complaint about APS to our service. One of our Investigators looked into things and recommended APS refund M its remaining loss with interest, because M didn't authorise the transactions and hadn't been grossly negligent. APS disagreed and asked for an Ombudsman's decision.

## **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.

It doesn't seem to be disputed that M didn't authorise the relevant transactions. But for the sake of completeness, I should make it clear I agree with our Investigator's findings. The payments should only be treated as authorised if M consented to them. In this case, I'm satisfied Mrs C (and therefore M) was tricked into sharing details enabling scammers to make payments out of M's account. But that M never expected payments to be made out of its account as a consequence, nor did it ever consent to these payments. So these payments were unauthorised. The starting point under The Payment Services Regulations 2017 is that APS is liable for unauthorised payments.

APS asserts (in essence) it shouldn't have to provide a refund because M, with intent or gross negligence, failed to comply with its obligations as a payment service user. But I'm not persuaded APS has shown this to be the case.

Mrs C received a call that appeared as Cashplus on her phone. The caller said they were from Cashplus's fraud team and took Mrs C through a process that involved tricking her into de-registering her phone and registering their own as a trusted device for M's account; and into providing them with a One Time Passcode (OTP) enabling fraudulent payments to be made.

APS has said the ability of fraudsters to spoof numbers is well publicised in the general media and 'how to protect yourself' Cashplus emails. But given how the call appeared and happened, and the pretext on which the scammers were calling Mrs C, I can see why Mrs C trusted they were from M's genuine bank – I think lots of people would've done.

APS has referred to Mrs C de-registering her phone and sharing an email and OTP with the scammer. It says the OTP text messages clearly state 'don't share with anybody' and that Mrs C nevertheless did this ignoring an obvious risk. But this was a sophisticated scam, and I can understand how Mrs C was tricked into believing she was protecting her account. And even if I thought Mrs C hadn't acted perfectly reasonably (and I'm not saying I do think that), taking all the circumstances into account I still wouldn't be persuaded she fell so far below what a reasonable person would've done that she failed with gross negligence.

I'm satisfied therefore that these transactions were unauthorised; that M didn't fail in its obligations with intent or gross negligence; and that APS needs to put things right by refunding M its losses from these unauthorised transactions alongside 8% simple interest per year to compensate M for the time it's been out of pocket.

### **My final decision**

For the reasons explained, I uphold this complaint and I direct Advanced Payment Solutions Limited to:

- pay M the total of the unauthorised transactions, less any amount already refunded; and
- 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 M to accept or reject my decision before 17 July 2023.

Neil Bridge  
**Ombudsman**