

The complaint

Mr D is a sole trader, trading as D. He complains that Advanced Payment Solutions Limited (trading as Cashplus Bank) won't refund payments he didn't make.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving the reasons for my 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.

Having done so, I've reached the same outcome as our investigator for these reasons:

- Cashplus has seemingly accepted this concerns unauthorised payments. While I've noted a mention of a safe account in one of Cashplus' call notes, which could point to authorised payments, it's not provided me with the call recording for this when I've asked for it. And given that the rest of Cashplus' and Mr D's communication consistently said Mr D didn't know about payments, I've proceeded on this basis.
- The starting position for unauthorised payments, in line with the Payment Services Regulations 2017 (PSRs), is that Cashplus is liable to refund them. However, it's refused to do this because it asserts Mr D failed with gross negligence to comply with the terms of the account and keep his personalised security details safe – something which, if proven, means he wouldn't be entitled to a refund under the PSRs.
- To support that, it's pointed out how Mr D shared one-time passcodes with a fraudster that ultimately authenticated the two disputed card payments.
- To decide this, I've reflected on the circumstances on the scam:
 - Mr D received a call from a withheld number who introduced themselves as calling from Cashplus's fraud team.
 - He recalled they said there had been some unusual activity on his account, and took him through 'security', where it was clear they knew several pieces of his personal information.
 - Mr D recalled hearing a call centre environment in the background.
 - After confirming he didn't recognise the suspicious transactions, the caller told him his account was under attack. To sort this, they'd need to verify Mr D by sending a code to his phone which he'd need to share.
 - The caller rang back a second time and said there was further attempted

fraud so they'd need another code to verify him.

- When the caller rang back a further time, Mr D became concerned and hung up before contacting Cashplus.
- Given the apparent professionalism and familiarity, I can see how Mr D came to trust the call was genuine. I can also understand how he was further reassured when a message genuinely came through from Cashplus when he'd been told to expect it.
- I recognise the messages referred to verifying a payment. Mr D said he didn't read these messages fully – instead he saw the code as a preview on his phone and shared it when they asked. Given that the code appears first in the message, and taking into account Mr D's trust he was speaking with Cashplus and that he needed to act quickly given his money was at risk, I can see how he did this. I don't think it means he acted with very significant carelessness to conclude he failed with gross negligence.
- Cashplus submit Mr D had suspicions with the calls. I recognise Mr D said he challenged the caller about who they were – but he was reassured when they were able to send a message that came from Cashplus. Of course, Mr D could've carried out further due diligence. But the test is whether he did everything he could have, or even ought reasonably to have done. And here, I don't think the steps he did take meant he seriously disregarded an obvious risk – to say he failed with *gross* negligence.
- I also realise Mr D became concerned with their persistent calls. But it remains that, at the time he shared these codes, he felt reassured he was talking with Cashplus and acting to protect his account.
- It follows that I'm not persuaded Cashplus has shown Mr D failed with gross negligence. So, in line with the PSRs, I don't consider he can be fairly held liable for these unauthorised payments and Cashplus needs to put things right – by refunding his losses from the payments alongside 8% simple interest per year to compensate him for the time he's been out of pocket.

My final decision

For the reasons I've explained, I uphold Mr D's complaint. Advanced Payment Solutions Limited must:

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 October 2023.

Emma Szkolar
Ombudsman