

The complaint

A company, which I'll refer to as R, complains that Advanced Payment Solutions Limited trading as Cashplus Bank (Cashplus) is holding them liable for unauthorised payments taken from their account. Mr R, who is a director of R, brings this complaint on R's behalf.

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 my 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 agree with the conclusions reached by the investigator for these reasons:

- Mr R has reported these payments as being unauthorised – and Cashplus hasn't disputed this. But, in line with the Payment Service Regulations 2017 (PSRs), it has refused to refund them on the basis that Mr R failed with gross negligence to comply with the terms of the account and keep R's personalised security details safe.
- Having considered the relevant regulations, and the action Mr R took, I don't agree he was grossly negligent. I'll explain why.
- Mr R received a call from the scammer on a number that appeared to match Cashplus's genuine number – a tactic known as spoofing. This supported Mr R's impression that he was genuinely speaking to someone from Cashplus, as claimed by the caller.
- The caller told Mr R there had been fraud on R's account. They said a phone number other than his own had been registered on the account, and used to take it over. This will have created pressure and urgency, in a bid by the scammers to persuade Mr R he needed to act quickly to 'secure' the account.
- Mr R was sent an email from an address that appeared to relate to Cashplus. He was directed to click on a link from that email, and this led him to a page which he has explained looked like Cashplus's genuine website. I understand he was tricked into entering details such as a One Time Passcode (OTP) he was sent, as well as forwarding an email from Cashplus.
- In doing so, Mr R was tricked into sharing details with the scammer which they used to make these payments. But it's clear he took the action he did without understanding he was breaching the account terms or failing to keep R's personalised details safe. To the contrary, he thought the action was necessary to *protect* R's account.

- Cashplus says the scam should have raised alarm bells as the email Mr R was sent came from an address that wasn't actually theirs. If Mr R had checked this, he would have identified it might be a scam. It also says he previously fell victim to a similar scam, so should have been more aware and vigilant.
- I've considered Cashplus's arguments. I think lots of people would have been tricked by the email address the scammer used – particularly when put under pressure and thinking their account was at risk. And having been primed for the email via a call spoofing Cashplus's genuine number. The domain name didn't make it clear it wasn't a genuine business email. So I can see why Mr R didn't identify a scam risk based on the email.
- While I appreciate Cashplus's point regarding the previous scam, I am mindful of the time that had passed between the events. And it could even have added to Mr R's panic at thinking he was at risk of fraud again.
- Additionally, unlike the previous scam, Mr R wasn't giving away an OTP or other details. He was simply *entering* them, as instructed by who he believed to be Cashplus – which didn't seem out of turn with the warning message for the OTP.
- It's my understanding (put to Cashplus, and which it hasn't disputed) the OTP message said the code should only be entered when prompted – which is what Mr R did. Additionally, the email I understand Mr R forwarded didn't include any warning that it shouldn't be shared. So I can see why he didn't realise that, in entering the code and sharing the email, he was failing to keep R's security details safe.
- Mr R fell victim to a sophisticated scam targeting Cashplus customers. In all the circumstances, I'm not persuaded he seriously disregarded an obvious risk, and was significantly careless, such that he was *grossly* negligent in sharing his details. So, in line with the PSRs, I'm satisfied Cashplus is liable for the unauthorised payments.
- The unauthorised payments caused R's account to be overdrawn. So Cashplus should remove any adverse credit information, and refund any fees charged, due to the overdraft. And as it should have refunded R sooner, it should pay interest to compensate them for the loss of use of the funds.

My final decision

My final decision is that I uphold this complaint. Advanced Payment Solutions Limited trading as Cashplus Bank must:

- Pay R the total of the unauthorised payments, less any amount recovered or already refunded;
- Refund R any fees and charges caused by the unauthorised payments;
- Remove any adverse information reported to the credit reference agencies as a result of R becoming overdrawn due to the unauthorised payments; and
- Pay 8% simple interest per year on the payment amounts funded by R's account balance, less any tax lawfully deductible. It doesn't have to pay this interest on the payment amounts funded by the overdraft.

Advanced Payment Solutions Limited must pay the compensation within 28 days of the date on which we tell it R accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 22 September 2023.

Rachel Loughlin
Ombudsman