

The complaint

A company, which I'll refer to as H, complain that Advanced Payment Solutions Limited trading as Cashplus won't refund an unauthorised payment taken from their account. Mr S, a director of H, brings this complaint on H'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 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:

- Under the Payment Service Regulations 2017 (PSRs), H is generally liable for authorised payments from their account and Cashplus is generally liable for unauthorised payments.
- The PSRs specify that authorisation depends on whether the payment was authenticated correctly – and whether the account holder consented to them.
- It seems to be agreed that the disputed payment was properly authenticated. Whether Mr S (on behalf of H) consented to it depends on whether he completed the agreed steps to make a payment. Or if someone else acting on H's behalf used those agreed steps.
- It's my understanding that, in order to make this payment, H's card details were entered or presented. Then, as prompted by a '3DS' security check, a One Time Passcode (OTP) was entered.
- I'm persuaded it wasn't Mr S who used or presented his card details – and, so far as I'm aware, that isn't disputed by Cashplus. Mr S received a scam call from someone posing as Cashplus. I believe that scammer had already obtained Mr S's card details and initiated the payment transaction, as is common in these types of scams. It appears to have been targeted at Cashplus customers.
- So, Mr S didn't complete – or consent to someone else completing – the agreed form and procedure to make a payment. It was initiated using his (likely stolen) card details. He says, during the scam call, the scammer claimed to be Cashplus and warned him fraud was being attempted on H's account. He was told he needed to share a security code with them to stop it.

- Although Mr S says he thinks he stopped and didn't share the last digit with the scammer, on balance I think he did. And the scammer then entered this code to make the payment. But it wasn't Mr S who entered the details, nor did he share the code in order to allow someone else to make a payment for him. So the payment is unauthorised.
- I've considered the circumstances of the scam which led to Mr S sharing the OTP. As, even though I'm satisfied the payment was unauthorised, Cashplus can still hold H liable if Mr S failed with intent, or gross negligence, to abide by the account terms or keep H's personalised security credentials safe – and that allowed the payment to be made.
- I don't think Mr S intentionally failed to keep the security details safe. While he likely did share the OTP, he did so on the understanding he was providing this to Cashplus, in order to *protect* the account. He didn't realise he was handing it to a third party, or that they could and would use it to make a payment.
- While I agree there may have been some negligence on Mr S's part, the bar I'm considering here is whether he was *grossly* negligent. That would mean identifying, but disregarding, an obvious risk. Or showing a very significant degree of carelessness.
- I can see why, in the circumstances, Mr S was caught off-guard and believed the caller. As mentioned, they were clearly targeting Cashplus customers. They knew details about H's account, as well as Mr S's name. So I can see why he accepted they were Cashplus, as they claimed to be.
- The tactic of telling Mr S that fraud had been attempted on the account created a sense of pressure and urgency, to persuade Mr S he needed to quickly act on the caller's instructions to protect H's account. In the heat of the moment, I don't think he recognised the risk of following the caller's instructions.
- I don't think Mr S disregarded very obvious warning signs. I think he was alive to signs of risk – as he did realise, albeit seemingly just after reading out the code, that the background noise didn't sound right for a call from his bank. But before that, he thought the caller's communication, as well as the information they had, credibly suggested they were from Cashplus. In the circumstances, I don't think it was *very significantly* careless to share the code.
- In response to the investigator's view, Cashplus argued Mr S should have realised something was wrong as the OTP message warned him not to share the code with anyone. But he's shown us the message and that's not correct. It just said it was to verify a transaction. And he can't recall if he read the full message or not.
- I've now seen several cases where Cashplus has asserted a warning was given without checking what the individual message said. I understand it has since added an improved warning to its messages, but it should know to check what actually happened in each individual case.
- As the message only said it was to verify a payment, and didn't warn Mr S not to share the code, I don't consider – in the circumstances – that he was grossly negligent to do so.

- In saying all of this, I do want to acknowledge there are some unknowns around exactly how this scam occurred. But, where Mr S disputes authorising this payment, I'm not persuaded Cashplus has done enough to justify why it's holding him liable.
- On balance, I'm satisfied Mr S didn't consent to the payment. While Cashplus asserts Mr S should be held liable as it believes he shared the OTP, that's not enough under the PSRs. In all the circumstances, I'm not persuaded it has shown he failed to keep the security details safe through intent or gross negligence. And so I don't think he should fairly be held liable for this transaction.

My final decision

For the reasons given above, I uphold H's complaint. Advanced Payment Solutions Limited trading as Cashplus must:

- Pay H the total of the unauthorised payment, less any amount recovered or already refunded – I understand this to be £12,330.52; and
- Pay 8% simple interest per year on this amount, from the date of the payment to the date of settlement (less any tax lawfully deductible).

Advanced Payment Solutions Limited must pay the compensation within 28 days of the date on which we tell it H accept my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 10 October 2023.

Rachel Loughlin
Ombudsman