

The complaint

Mr G is a sole trader, trading as B. He complains that Advanced Payment Solutions Limited trading as Cashplus Bank is holding him liable for an unauthorised payment taken from his account.

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:

In line with the Payment Services Regulations 2017 (PSRs), Mr G isn't liable for payments he didn't authorise – unless he failed with gross negligence or intent to comply with the terms of the account or keep his personalised security details safe.

The PSRs specify that authorisation depends on whether the payment transactions were authenticated correctly – and whether the account holder consented to them. It's accepted the disputed payment was properly authenticated.

The PSRs go on to state how consent is given. It must be in the form, and in accordance with the procedure, agreed between the payer and the payment service provider. In other words, Mr G consents if he completes the agreed steps to make a payment. Or if someone else acting on his behalf does so.

My understanding is that, to make this payment, the scammer first entered Mr G's card details (such as the card number and CVV) on the website of the retailer the payment went to. Mr G was then sent a One Time Passcode (OTP) message from Cashplus. He was tricked into sharing this passcode with the scammer, who then entered it to complete the payment.

We don't know how the scammer got hold of Mr G's card details. But based on his consistent testimony about the scam call, I'm persuaded he didn't share them – as he mentions the caller already had his details, which contributed to his belief they were, as they claimed, from Cashplus. This is consistent with the pattern of many scams our service sees.

I therefore think Mr G's card details were stolen and used to initiate the payment. Although Mr G then shared the OTP with the scammer, he didn't enter it on the payment screen – nor did he complete any of the other steps (such as entering his card details) to make the payment.

In sharing the code, I don't think Mr G was permitting the scammer to complete the steps to make the payment on his behalf. He didn't know the payment would be made; instead, he thought he was sharing the code with Cashplus in order to *prevent* a payment from being made, by confirming it was fraudulent.

I therefore consider the disputed payment to be unauthorised. And, having carefully considered the circumstances of how and why Mr G shared the OTP, I don't think his doing so amounted to him intentionally or grossly negligently failing to keep his personalised security credentials safe.

Mr G received a call from someone purporting to be from Cashplus. He was persuaded it was actually his bank as they knew details such as his name, address, mobile number, work number and card number. I can therefore see why Mr G believed he was speaking to Cashplus. The information the caller had suggests this was a targeted scam against Cashplus customers.

The caller told Mr G someone had tried to make two fraudulent transactions using his card. They said they had stopped the payments, but needed him to confirm they were fraudulent. To do this, they said they would send him messages about the payments – and he needed to share the codes they contained over the phone. Mr G did as instructed. The first payment didn't go through, seemingly due to there being insufficient funds in the account. But the second payment – for £1,084.15 – was taken.

It seems clear Mr G didn't intentionally fail to keep his security credentials safe. He shared the code with who he thought was his bank, under the belief this would protect his account by confirming the attempted payments as fraudulent.

While Cashplus has argued that it regularly sends its customers regular communications about fraud prevention, including that Cashplus won't ask for OTPs, I can see why this wasn't in Mr G's mind at the time. This is bearing in mind that the scammer appears to have used social engineering to build trust with Mr G, as well as creating a sense of urgency. He was relieved 'Cashplus' had prevented the fraud – and thought he needed to follow the caller's instructions, as a matter of urgency, to secure his account.

Although the OTP message said it was to verify a payment, setting out the amount and retailer, I can also see why – in the circumstances of the scam – Mr G didn't realise that, by sharing the code, he was breaching the account terms and compromising the security of his account. That code by itself wasn't enough to authorise a payment, and he didn't know his card details had been stolen. He had also been primed by the caller – who he believed to be from Cashplus, and who he thought was acting to protect him from a fraud risk – to expect the texts.

Cashplus said the OTP messages contained a warning not to share the code with anyone. But Mr G has provided the messages to show they didn't contain any such warning (although I understand Cashplus has more recently added a warning to its messages).

In the context of Mr G thinking he was sharing the codes with his own bank, in relation to attempted fraudulent payments, I don't think his actions showed a *very significant* degree of carelessness which amounted to *gross* negligence. I don't think he identified, and overlooked, the scam risk. Instead, I think – in the circumstances and in the heat of the moment – he believed the caller. I think lots of other people would have done the same in those circumstances.

Overall, I'm satisfied the disputed payment was unauthorised. And Cashplus hasn't persuaded me that Mr G's actions here amount to a failing of gross negligence. I therefore conclude that Cashplus is liable for the payment. To put things right, it should refund Mr G's loss and pay interest on this to compensate him 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 refund the unauthorised transaction, less any amounts recovered or already refunded.

It should also 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 September 2023.

Advanced Payment Solutions Limited trading as Cashplus must pay the compensation within 28 days of the date on which we tell it Mr G accepts my final decision.

Rachel Loughlin
Ombudsman