

The complaint

U (represented by its director Mr L) complains that Caxton Payments Limited is holding it liable for a payment it did not authorise.

What happened

U holds a business account with Caxton, on 7 December 2022 Mr L asked Caxton to arrange a payment of \$33,000 to a Dubai bank account in his name. Caxton confirmed the exchange rate to Mr L later that day and said it would arrange the transfer.

The following day, Caxton received an email – apparently also from Mr L – asking for the payment to instead be made to a different Dubai bank account. Caxton confirmed it would make the payment to this new account and, ultimately, the transfer was completed on 14 December 2022.

When Mr L did not receive the funds into the account he was expecting, it became apparent that he'd been the victim of a sophisticated fraud. It seems emails between Mr L and Caxton had been intercepted and changed so that the payment was diverted to an account belonging to a third party. Mr L asked Caxton to refund the payment to him, he confirmed that he had not made the request for the recipient account to be changed and he felt Caxton should have contacted him to confirm the change in account details before processing the payment.

Caxton didn't agree, it said the emails it received were consistent with its usual correspondence with Mr L and so hadn't caused it any concerns. It also said that, as a business, U had a responsibility to ensure its email systems were secure and Caxton did not think U had done enough to protect itself. Caxton also noted that Mr L had received emails purporting to be from Caxton which should have caused him concern, but that he did not flag those with Caxton at the time. So, overall, Caxton did not believe it was unfair for U to be held liable for the disputed payment.

As Mr L remained unhappy he referred U's complaint to our service, where one of our Investigators looked into what had happened. They felt that there was enough to flag to Caxton that this payment may be suspicious, and so they considered that Caxton should have done more to ensure it was legitimate. They also didn't think that anything Mr L had done amounted to gross negligence. So they recommended that Caxton refund the payment to U with interest.

Caxton disagreed, it maintained that U had not done enough to either prevent the fraud or to flag it when it received suspicious emails, and that there had been no reason for it to flag the payment as suspicious.

As no agreement could be reached this case has been passed to me for a 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.

The relevant law relating to this complaint is the Payment Services Regulations 2017 (PSR's), and broadly speaking U is responsible for any payments that it has authorised and it isn't responsible for unauthorised payments. The exception to this is where the payment service user (in this case Mr L, acting on behalf of U) has acted fraudulently, or has with intent or gross negligence failed to comply with their obligations as a payment service user.

Having reviewed all the evidence provided, I'm satisfied that U did not authorise this payment. I consider that it is clear from the extensive email correspondence provided that an unknown third party was intercepting emails between Mr L and Caxton and it was that individual who impersonated Mr L to authorise the payment to the new account, not Mr L himself.

Caxton suggested in its initial submission to us that it was possible Mr L may have been complicit in this fraud, but I have seen no clear evidence to support that. What I have seen is evidence that emails were sent but not received by both Caxton and Mr L, and that both Caxton and Mr L were impersonated by the scammer, via email. I'm satisfied that Mr L was the victim of a sophisticated fraud and that neither he nor any other agent of U was aware that the disputed payment was not being made to the account he had specified.

Given that I'm satisfied U did not authorise this payment, the starting position is that U should not be held liable for it. The exception is if Caxton can demonstrate that U failed with intent or gross negligence to comply with its obligations as a payment service user, and thereby enabled the transaction to take place. I've not seen any arguments to suggest that U – or Mr L – failed with intent here, so I'll focus on gross negligence.

The FCA, in its guidance on its approach under the PSRs explains that *"we interpret 'gross negligence' to be a higher standard than the standard of negligence under common law. The customer needs to have shown a very significant degree of carelessness."*

Caxton has suggested that the very fact U's emails were hacked by a third party demonstrates that it had not done enough to protect itself from fraud. But given the high bar for gross negligence, and the sophistication of email interception scams such as this, I think it is difficult to argue that U has been grossly negligent here. Caxton has also referred to suspicious emails that Mr L received where a purported employee of Caxton asked him for a loan, but that was some days after the transfer in question here, so would not have been a trigger point that could have prevented the fraud.

So with this in mind, I don't consider that Mr L's actions (as director of U) fell so far below the standard of a reasonable person that he failed with gross negligence. It follows that, as per the PSR's, I do not consider it reasonable for U to be held liable for the disputed payment, and I therefore agree with our Investigator's recommendation that Caxton should refund the disputed payment to U.

Our Investigator, and Caxton, have discussed in some detail the question of whether Caxton should have been aware that something untoward was going on and so should have stepped in to question this payment. But given the above, I do not consider this to be relevant to this case, so I have not commented on it further.

Putting things right

To resolve this complaint Caxton should:

- Refund to U's account the \$33,000 payment that is in dispute;
- Refund any fees or charges associated with that payment; and
- Add 8% simple interest from the date the payment was made until the date of settlement.

My final decision

I uphold this complaint. Caxton Payments Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask U to accept or reject my decision before 16 October 2023.

Sophie Mitchell
Ombudsman