

## **The complaint**

Mr B, in his capacity as the director of a limited company R, complains that Advanced Payment Solutions Limited trading as Cashplus Bank ("Cashplus") won't refund a transaction he didn't authorise.

## **What happened**

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

- In March 2023, Mr B received a text message that appeared to come from Cashplus – the scammer had spoofed Cashplus's number and so the text message appeared in the same thread as genuine messages from it. The message said that Cashplus would contact Mr B shortly to discuss unauthorised activity on R's account, and to share the one-time passcode (OTP) to cancel the transaction as well as the debit card.
- Soon after, Mr B received a call from someone purporting to be from Cashplus. Again, unbeknownst to Mr B, the number had been spoofed. The caller knew some of his personal information as well as R's account information and said they'd called in relation to suspicious activity on the account. When instructed, Mr B shared the OTP to cancel the transaction and his card. After the call ended, Mr B became suspicious and realised he'd been scammed when he discovered a card payment of £4,275 had left the account.
- Cashplus declined to refund R's loss; it said Mr B had shared the OTP which was then used to verify the payment and so it shouldn't be held liable.
- Our investigator upheld the complaint as they didn't agree with Cashplus that Mr B should be held liable. Cashplus disagreed and so the complaint was passed to me to decide.

## **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 the following reasons:

- In line with the Payment Services Regulations 2017 (PSRs), R isn't liable for payments it didn't authorise, unless Mr B (acting on R's behalf) failed with intent or gross negligence to comply with the terms of the account or keep the account security details safe.

- To consider a payment authorised, the PSRs explain that Mr B must have given his consent to the execution of the payment transaction – and that consent must be in the form, and in accordance with the procedure, agreed between him and Cashplus.
- The transaction in question was made using a debit card. I also understand that it was a “card not present” transaction, i.e., without involving the physical card and its associated PIN. To establish the agreed form and procedure for online card payments, I’ve reviewed the terms and conditions that Cashplus has referred us to. They say that card payments can be authorised by following the instructions provided by the retailer and providing ‘relevant’ card details. I take that to mean the long card number, CVV code, expiry date, the billing address, and entering the OTP if prompted.
- Mr B says that other than the OTP, he didn’t share any other details with the caller. And that he shared the OTP thinking it was needed to cancel the fraudulent transaction and his card. I’m not persuaded that Mr B completed all the steps in the form, and in accordance with the procedure, required to consent to making the payment. Someone else used his card details on the retailer’s website. And from what he’s told us about what happened at the time, I don’t think Mr B could reasonably be described as having given someone else permission to go through the form and procedure to make this payment on his behalf either. He shared the code believing it was required to cancel the transaction and his card, not for a payment to be made to a certain merchant. So, under the PSRs, the payment transaction is considered unauthorised.
- I’ve gone on to consider if there’s anything else under the PSRs that fairly means Mr B could still be held liable for this unauthorised payment. For example, if Cashplus can show he failed with intent or gross negligence to comply with the terms of the account or keep the personalised security details safe. While Cashplus hasn’t explicitly argued this, it seems some of its submissions allude to this.
- I don’t find that Mr B failed with intent to keep his security credentials safe. I say this because he believed that the information he’d been asked to share was necessary to secure R’s account. So, in his mind, he was safeguarding the account.
- I also don’t find that Mr B failed with gross negligence. He’d received a text message, which appeared to come from Cashplus, telling him it would shortly call him. So, he was expecting the call. He was also expecting to share the OTP when it came through. From what Mr B’s described, the scammer already had information about him and R when they called him. I think it’s likely the fraudster already had the card details before, and they called to get the OTP necessary to make the payment.
- Cashplus has argued that Mr B shared the OTP despite the text message making it clear that it was to verify a payment, not to cancel a transaction or the card. Mr B’s explained that he focused on the code as soon as the message came through without reading the rest of it, as he was expecting it. Having considered these circumstances, I can see how Mr B trusted it was all genuine – the call as well as the preceding message seemed to have come from Cashplus’s genuine number; and the message had already instructed him to share the OTP during the call when requested – I think lots of people would have done the same.
- While it’s arguably careless not to stop and read the entire message carefully, the test I’m considering here is whether Mr B acted with a very significant degree of carelessness to conclude he failed with gross negligence. Here, I can understand

how Mr B simply shared the code when he trusted the caller was from his bank, the message came through as expected, and he thought he was acting to sort out fraudulent activity on the account. I don't think that Mr B seriously disregarded an obvious risk in the circumstances. And taking everything into account, I'm not persuaded that he failed with gross negligence. It also follows that, in line with the PSRs, I don't consider R can be fairly held liable for this unauthorised payment and Cashplus needs to put things right.

### **Putting things right**

To put things right, Cashplus needs to:

- reimburse R the unauthorised transaction of £4,275; and
- pay 8% simple interest per year on this amount, from the date of the unauthorised transaction to the date of settlement (less any tax lawfully deductible)

### **My final decision**

For the reasons given, my final decision is that I uphold this complaint. I require Advanced Payment Solutions Limited trading as Cashplus Bank to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 19 October 2023.

Gagandeep Singh  
**Ombudsman**