

## The complaint

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

## What happened

The details of this complaint are well known to both parties. So rather than repeat them again here, I'll focus on giving the 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:

- Cashplus accepts the payment being complained about is unauthorised. But it argues it isn't liable, in line with the Payment Service Regulations 2017 (PSRs), because Mr B was grossly negligent in sharing the One Time Passcode (OTP) used (along with the card details, which there is no allegation Mr B shared) to make the payment.
- I've considered the circumstances of the scam Mr B fell victim to, to assess whether his actions amount to gross negligence. It unfolded as follows: Mr B's phone had been off as it was out of battery. When he turned it on, he had multiple missed calls. He then received a call from a scammer claiming to be from Cashplus, saying they had been trying to contact him urgently. That seemed plausible to him given the missed calls. And they also knew specific details about B's account – which persuaded Mr B he was genuinely speaking to Cashplus.
- The caller told Mr B a payment of £7,821.02 had been attempted on B's account. They told him they needed to block the card, stop the transaction, and authorise a replacement card. To do that, they said they needed him to confirm a security code they would send. So Mr B was primed to expect a code from Cashplus.
- Mr B then received the message. The code showed on his phone without him opening it. So he shared the code with the scammer without reading the full message. And they used the OTP, along with the card details they had already obtained, to make (rather than prevent) a payment of £7,821.02.
- While Mr B admits he didn't read the full message, I don't consider that *grossly* negligent in the circumstances. I can see why he believed he was speaking to Cashplus, given the information they knew about B's account. And he was told to expect the code. So I don't think it was *significantly* careless to then share this with who he thought was B's genuine bank.

- It has to be borne in mind that the scammer created a sense of urgency. They told Mr B the account was at risk – a social engineering tactic to pressure him to act quickly, and follow their instructions, to “protect” the account. In those circumstances I don’t think Mr B identified but overlooked an obvious risk, such that he was grossly negligent. Instead, he didn’t foresee the risk he was being tricked about the purpose of the code.
- Cashplus says it should have concerned Mr B that he had so many calls from a number that didn’t match its own. But in the circumstances, as outlined above, I understand why Mr B didn’t think to check the number – having been persuaded it was Cashplus because of the caller’s knowledge of the account, and being put under pressure due to thinking fraud was being attempted.
- Furthermore, Cashplus’s records don’t show Mr B said all the missed calls came from the same number (as opposed to thinking he had missed calls from parties *including* Cashplus). Regardless, I can see why – in the context of getting a call from someone claiming to be Cashplus, saying they had been trying to get hold of him urgently – he didn’t realise that was a sign of fraud. Instead, it seemed to back up what he was told.
- While Cashplus says Mr B didn’t initially admit to sharing the OTP, it’s now accepted he did. We know scam victims aren’t always immediately forthcoming about what happened, due to factors such as confusion and embarrassment. I can see Mr B has been consistent about what happened since shortly after the scam – also factoring in that there was a delay on Cashplus’s end looking into things. I consider his explanation plausible and likely, and I don’t think he was grossly negligent.
- Cashplus hasn’t alleged that Mr B intentionally failed to abide by the account terms of keep B’s personalised security credentials safe. While he shared a passcode, he did so thinking he was sharing the code with bank to *protect* the account from fraud – by preventing a payment from being taken.
- As I haven’t found Mr B allowed the unauthorised payment to be made through a failure of gross negligence (or intent), in line with the PSRs, Cashplus is liable for this payment. I’ve determined it should therefore refund B, with interest for the loss of use of the funds.

### **My final decision**

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

- Pay B the total of the unauthorised payment, less any amount recovered or already refunded – I understand this to be £7,821.02; 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 B accept my final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask B to accept or reject my decision before 9 October 2023.

Rachel Loughlin  
**Ombudsman**