

The complaint

Mr W, in his capacity as the director of a limited company W, 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 W received a call from someone purporting to be from Cashplus. They knew some of his personal information as well as W's account information and said they'd called in relation to suspicious activity on the account.
- Under the pretext of completing customer verification, the caller obtained a one-time passcode (OTP) from Mr W. After the call ended, Mr W realised he'd been scammed when he discovered the OTP that he had shared was to approve a card payment of £6,135.
- Cashplus declined to refund W's loss; it said Mr W shared the OTP.
- Our investigator upheld the complaint as they didn't agree with Cashplus that Mr W 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), W isn't liable for payments it didn't authorise, unless Mr W (acting on W'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 W 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.

- The investigator concluded that the likely card details included the long card number, CVV code, expiry date, the billing address, and entering the OTP when prompted. Cashplus hasn't disputed this and so I've proceeded on the same basis.
- Mr W says that other than the OTP, he didn't share any other details with the scammer. And that he shared the OTP thinking it was needed to complete customer verification. Cashplus hasn't disputed that Mr W's card details were used by a fraudster on the retailer's website. Given this, I'm not persuaded that Mr W completed all the steps in the form, and in accordance with the procedure, required to consent to making the payment. Nor do I think Mr W could reasonably be described as having given someone else permission to go through the form and procedure to make this payment on his behalf. As such, 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 W 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 W failed with intent to keep his security credentials safe. I say this because he believed the information he'd been asked to share was necessary to complete customer verification to secure W's account. So, in his mind, he was safeguarding his account.
- I also don't find that Mr W failed with gross negligence. From what he's described, the scammer already had several pieces of sensitive information about Mr W and W when they called him, and he truly believed he was speaking to someone from his bank. It isn't clear how the scammer got hold of Mr W and W's details. We know there are lots of different ways fraudsters harvest someone's card details – for example, using phishing websites, installing malware or from data breaches. It follows that 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 W shared the OTP despite the text containing it warned him not to. Mr W's explained he focused on the code as soon as the notification came up on his mobile device without reading the rest of the message, as he was expecting to receive it. Having considered these circumstances, I can see how Mr W trusted the call was genuine – I think lots of people would have done. And while it's arguably careless not to stop and read the message carefully, the test I'm considering here is whether Mr W acted with a very significant degree of carelessness to conclude he failed with gross negligence. Here, I can understand how Mr W 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 fraud on W's account.
- It follows that I don't think that Mr W 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 W 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 W the unauthorised transaction of £6,135; 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 Mr W (as the director of W) to accept or reject my decision before 10 October 2023.

Gagandeep Singh
Ombudsman