

The complaint

S, a limited company, complains that Advanced Payment Solutions Limited (APS) didn't respond promptly enough to notification of fraud and that this caused it a loss.

Mr L is S' director and he brings the complaint on its behalf and has used a representative when doing so. But, for ease of reading, I'll mostly just refer to Mr L where I mean either S or the representative.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In October 2022 Mr L was sadly the victim of a safe account scam. He was contacted by scammers impersonating his bank and persuaded to make payments from S' account with its own bank 'T' to an account held with APS. At the time he believed that this was necessary to protect his money. As a result of the scam Mr L made four payments totalling around £36,000 all of which were on 25 October 2022.

When the scammer informed Mr L that his personal account (with another bank) might also be at risk, he realised this might be a scam and ended the call with the scammer. He then contacted T who confirmed it was a scam and reported the payments already made to APS.

Ultimately APS said they were unable to provide a refund of the lost funds and didn't uphold the complaint. The matter was referred to our service and one of our Investigators thought the complaint should be upheld. She recommended that APS pay Mr L around £34,000, this was because she thought if APS had done all they ought to have, then all except £2,000 of Mr L's money would have been recoverable.

Mr L accepted this outcome, but APS didn't and they asked for an Ombudsman to make a decision. In December 2023 I issued a provisional decision in which I said:

"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, whilst I still think this complaint should be upheld, I'm intending to reach a different outcome compared to our Investigator and so I'm issuing this provisional decision to give both sides a further opportunity to comment.

The evidence I've seen shows that APS received an email from T providing details of the scam Mr L was a victim of at 6.07pm on 25 October 2022. This email included the details of Mr L's payments, the recipient sort code and account number and that the payments had all been made as the result of a scam.

APS have explained that on the day in question their phone lines were open and available to accept notifications of fraud until 8pm. They say that had T called rather than emailed, they may have been able to mitigate some of the loss.

It isn't for me to tell APS how they should generally configure their staffing levels and organise their business. But in the circumstances of this complaint, I need to decide whether it was fair and reasonable for APS to not deal with an email notification of potential fraud by one of their customers (received just after 6pm) until the following morning. I don't think it was and I'll explain why.

I've considered UK Finance's Authorised Push Payment (APP) voluntary best practice standards. I note APS are a member of UK Finance, but I accept this doesn't automatically mean they agree with or are bound by all UK Finance guidance due to their membership alone. The best practice standards (whilst voluntary) have been in place for a number of years and one of the principles states that "Receiving Firms will ensure adequate resource is available to receive APP claims and take appropriate action 24/7 365."

I appreciate the industry guidance also includes that "It is acknowledged that each Firm will be structured differently, have different IT systems and the size of the Firm will determine the level of division of labour." And I have taken this into account when thinking about what is fair and reasonable. APS are a bank and publicly available information shows that they provide over 2 million accounts. And crucially they were operating (albeit limited to phonelines) during the material time.

So in the circumstances of this complaint, particularly where the notification arrived during a time when APS had staff available to take calls (just not to monitor the inbox that received the fraud notification), I don't think T's notification not being dealt with until the following day was reasonable. I've seen no evidence to suggest that APS had shared with other banks that it could only receive notification by phone at that time, nor that it had an existing backlog of reports to work through which might otherwise have explained the delay. So, I've gone on to think about whether this impacts the loss Mr L has suffered.

The best practice I've referred to above says that notifications should be dealt with 'immediately'. However, in practice this will always still take some time. The notification needs to be read, understood and checked against APS' own systems. And then a decision needs to be taken as to whether to block the account and any associated cards (something APS' terms allow them to do in such circumstances). It is also reasonable that there might not be a staff member available immediately to action the email the moment it is received. So I think a fair and reasonable expectation in these circumstances (and as I've said in the absence of evidence that there was a backlog of notifications at the material time) is to expect the account to have been blocked within an hour of the notification having been received.

This means that I don't think some of the payments from the APS account (that spent Mr L's funds) reasonably could have been prevented. This includes three payments that together totalled £4,782.47 – these all took place prior to 7.07pm. But, if APS had done as I'd expect in this situation, I think the remainder of Mr L's loss could have been prevented as those funds would have remained in the account and would've been available for recovery. As such, I think it would be fair and reasonable for APS to pay this amount to Mr L. I also think 8% simple interest should be added to this amount to be calculated between 31 October 2022 (given I think the return of the remaining funds would have taken a few business days to arrange between the banks) and the date of settlement.

I've also considered whether Mr L fairly and reasonably should be held partly responsible for his own loss due to contributory negligence, such that I should make a reduction in my proposed award on that basis. And in the circumstances of this complaint, I'm not persuaded he should be. A common feature of safe account scams is that the victim is pressured to act quickly fearing the loss of their funds. The evidence I've seen shows his four payments all

credited the APS account in a very short period of time – supporting that this likely was a result of the sense of urgency created. Overall, in these circumstances, I'm not persuaded that Mr L knew, or reasonably ought to have concluded that the payments he was making were potentially as a result of a scam – but decided to continue despite this. And as such I don't intend to make a reduction in award.

Putting things Right

APS should pay S £31,402.69 – this is the sum of the payments he made to the APS account (£36,185.16) less the £4,782.47 I've referred to above. 8% simple interest should be added to this in line with what I've set out above."

Mr L didn't respond to my provisional decision. APS responded to say they accepted it.

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.

As neither party had any further evidence of information for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint. Advanced Payment Solutions Limited must take the steps set out at "Putting Things Right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 15 February 2024.

Richard Annandale
Ombudsman