

## The complaint

A company, which I'll refer to as K, complains that Advanced Payment Solutions Limited (trading as Cashplus Bank) won't refund a payment it didn't make.

Mr K, who is a director of K, brings the complaint on K's behalf.

## What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so 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.

- Cashplus has accepted this complaint concerns an authorised payment. That means, in accordance with the Payment Services Regulations 2017, it's presumed liable for the loss in the first instance.
- However, it's only offered to refund K half of its losses. It's pointed out how Mr K told Cashplus he'd been targeted by scammers before, so it would expect him to be more aware of scams and not to divulge a one-time passcode. It's also highlighted the nature of K's business which would require careful due diligence with significant payments.
- To hold K liable for losses from an unauthorised payment, it's not enough to say Mr K ought to have done more or that he acted carelessly. Instead, Cashplus must show he failed with *gross negligence* to comply with the terms of the account and keep K's personalised security details safe.
- To assess this, I've considered the circumstances of the scam. Mr K received a call from someone posing as Cashplus's fraud team. He recalled they seemed calm and professional and took him through routine security questions before they explained there had been suspicious transactions from K's account. To stop them, they asked him to read a code they'd send him by text. Mr K read out the code when it appeared in a banner on his phone, having become panicked for the security of the account.
- Given their apparent professionalism, I can see why Mr K trusted the call was genuine. And I can imagine he would've been further reassured when the text appeared from Cashplus when he'd been told to expect it. Considering this and Mr K's worry that K was being defrauded, I don't think he acted with very significant carelessness for simply focussing on the code in the message without reading the overall context. I think lots of people would've been similarly tricked in these deceptive circumstances.
- I've considered Cashplus's point about the nature of K's business meaning it ought to

carefully review high-value transactions. But I think it's understandable Mr K didn't realise a payment had been initiated. It seems the fraudsters had used card details they'd stolen prior to the call. And given they asked for the code under a very different context to that if he'd initiated the payment himself, I can see how he didn't stop to carefully review things.

- I've also noted Cashplus's argument that Mr K had been targeted by scammers before. But given the number of sophisticated scams in existence and the pace of how these evolve, I don't think it means he was grossly negligent simply because he'd been targeted before. And given that Cashplus hasn't provided any further detail to support this submission, such as how the scam was similar in nature or proximity, I'm not persuaded this is enough to show he failed with gross negligence.
- It follows that, in line with the PSRs, I don't consider K can be fairly held liable for this unauthorised payment and Cashplus needs to put things right – by refunding K's losses from the payment alongside 8% simple interest per year to compensate it for the time it's been out of pocket.
- I've noted Mr K went through a terrible time personally because of this scam and lack of refund, which I was sorry to read. But the eligible complainant here is K, a limited company and a distinct legal entity who can't reasonably suffer distress. So I've not made an award to reflect this.

### **My final decision**

For the reasons I've explained, I uphold K's complaint. Advanced Payment Solutions Limited must:

- Pay K the total of the unauthorised payment, less any amount recovered or refunded – I understand this to be £10,000.00.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised payment to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 17 April 2024.

Emma Szkolar  
**Ombudsman**