

## The complaint

Mr J, as director of the limited company “B”, has complained that Advanced Payment Solutions Limited (trading as Cashplus Bank) won’t refund transactions he says he didn’t make or otherwise authorise.

## What happened

Mr J has explained that his bag was stolen while on a train abroad. Amongst other belongings, it contained B’s Cashplus debit card. The card and PIN were then used for over £4,300 of cash machine and point-of-sale payments. Mr J said he was travelling alone, the PIN was a random number which he hadn’t shared with anyone, and the only written record of the PIN was his PIN reminder from Cashplus, which was safe back at home in the UK and not in the stolen bag. He reported the matter late because he initially forgot that the Cashplus card was in that bag.

Cashplus held B liable for the payments in dispute, on the basis that they couldn’t see a likely way that a thief could’ve learned the PIN without consent.

Our investigator looked into things independently and upheld the complaint in full, on the suggestion that it was technically possible someone could’ve guessed the PIN. Cashplus appealed, so the complaint’s been passed to me to decide.

I sent Mr J and Cashplus a provisional decision on 30 October 2023, to explain why I thought only the contactless payments should be refunded. In that decision, I said:

*Broadly speaking, Cashplus can hold B liable for the payments in dispute if the evidence suggests that Mr J authorised them, or if he failed to keep the account safe either intentionally or through acting with gross negligence.*

*I’m satisfied from Cashplus’ technical evidence that the payments in dispute used B’s genuine card, and for the non-contactless ones: the correct PIN too. This was not a cloned card, and the PIN was not bypassed. So I can see that these transactions were properly authenticated.*

*The main issue here is how someone might have learned the PIN. Mr J had not used the card and PIN before the disputed payments started, so there was no opportunity for a thief to watch him enter the PIN and then steal the card. He’d not told anyone the PIN, and it was a random number rather than one which could realistically be deduced. It is exceptionally unlikely that a thief would happen to simply guess the PIN. And no one who Mr J knew was with him at the time, so this could not have been done by a known party.*

*This leaves only two likely and plausible possibilities:*

1.) That Mr J authorised the payments, either by making them himself or giving someone else permission to make them; or

2.) That despite his best recollections, Mr J did keep a record of the PIN with the card.

*I do not think that the first possibility is most likely. Mr J has provided comprehensive evidence that he completed his journey, and so at the times the disputed payments took place, he was far away. He's also evidenced that he reported the other belongings in the bag as stolen at the time, and paid to replace them. And he gave consistent testimony about the theft in his police reports.*

*And so based on the evidence and the balance of probabilities, the most likely explanation for how the PIN was used is that Mr J kept some kind of record of it in the stolen bag along with the card. And that would mean Mr J failed to keep B's account safe in line with the terms and conditions. It may be that he did this knowingly, or by not taking enough care. But it is widely understood that keeping a note of the PIN with the card is very risky, since anyone who has the card is then able to use it without further checks – which seems to be what happened here. And there's no other plausible conclusion I can reasonably reach.*

*That means Cashplus can hold B liable for the payments which used the PIN. The contactless payments which did not use the PIN – totalling around £40 – would still need to be refunded as unauthorised. The contactless transactions could be made by anyone who came across the card, and did not need the PIN, so failing to keep the PIN safe is not a relevant consideration for those payments.*

*Mr J questioned why Cashplus didn't send a text message or one-time passcode for these payments. As Mr J will know from his other accounts, such one-time passcodes are more relevant for other payments like online banking, rather than card payments. B's card was already protected by its encrypted microchip and the PIN, which only Mr J should've known. I also don't see that Cashplus needed to flag or block these payments – they were each for relatively modest amounts, made using the genuine card and the correct PIN which only their customer should've known. So at the time, to Cashplus it would have looked like it was Mr J making the payments.*

*In summary, based on the evidence, there isn't a likely or plausible way that someone made these payments without Mr J's consent, unless he failed to keep his PIN safe either intentionally or through acting with gross negligence. This means that Cashplus can decline a refund for the payments which used B's PIN. This is a difficult message for me to give, and I know it's a difficult message for Mr J to receive. But given the evidence I have and the balance of probabilities, I'm currently unable to reasonably reach any other conclusion.*

I said I'd consider anything else anyone wanted to give me. Cashplus confirmed they had nothing more to add. Mr J said there was no more evidence he could give. But he did have some further points and queries, which I'll talk about below.

### **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.

Mr J questioned whether any of the disputed transactions were made online. To confirm, none of them were made online. They were all in-person payments made using the physical card. There were a few contactless payments which only used the card's chip. The majority used both the chip and the correct PIN.

Mr J reiterated that he was sure he hadn't kept a record of the PIN with the card, saying he was extra security conscious due to his career. He accepted he couldn't prove that he hadn't kept such a record, but he also pointed out it was not proven that he had. I understand where he is coming from and appreciate his strength of conviction about this. I agree with Mr J that I cannot categorically prove what happened one way or the other. Instead, my decision is based on the balance of probabilities. Here, the disputed payments were authenticated properly using the genuine card and, for the bulk of them, the correct PIN. It was not a cloned card and the PIN was not bypassed for any of the chip and PIN payments. The transactions could not have been made by anyone who Mr J knew. There was no opportunity for a thief to watch Mr J entering the PIN beforehand, Mr J had not shared the PIN, and the PIN was a random number that could not realistically be deduced. And the chances of a thief simply guessing the PIN on the first try are about 1 in 10,000, or a 0.01% chance. So we can be about 99.99% sure that that did not happen.

That means the only likely and plausible possibilities remaining are that Mr J either authorised the payments or kept a record of the PIN with the card. I don't think he authorised the payments, for the reasons I discussed in the provisional decision. So him keeping a record of the PIN with the card, despite his best recollections, is the only likely and plausible possibility remaining. I can then only fairly conclude that that's what most likely happened.

Mr J reiterated that he thought Cashplus should've blocked the payments, and again I do understand his point of view. I accept that the payments totalled a significant amount in the end. But the starting point in law is that banks are expected to process payments that a customer authorises them to make. And to Cashplus, it would've looked like it was Mr J making the payments, since they were made using the genuine encrypted card and the correct PIN. I don't find that the payments were sufficiently suspicious that I should say Cashplus should've definitely stopped them.

Lastly, Mr J said Cashplus should've stopped further payments from being made when he reported his card as stolen. To clarify, they did. His card was blocked. It may just appear as if some payments were made afterwards as transactions can take time to finish processing, and the statement date will often be later than the date the payment was actually made. And Cashplus were not able to stop card payments which had already been made before the block, even if the payment then took some time to finish processing.

So having reconsidered the case, I've come to the same conclusion as before.

### **Putting things right**

I direct Advanced Payment Solutions Limited to:

- refund the disputed contactless transactions only; and-
- pay simple interest to B on those contactless transactions, at the rate of 8% simple a year, payable from the date they were last debited until the date they're returned<sup>†</sup>. This is to compensate B for the time it didn't have its money.

† If Cashplus considers that they're required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, they should tell B how much tax they've taken off. They should also give B a tax deduction certificate if Mr J asks for one. Mr J may be able to reclaim the tax from HMRC if B doesn't normally pay tax.

### **My final decision**

I uphold B's complaint in part, and direct Advanced Payment Solutions Limited to refund the contactless payments and add simple interest, in the way I set out above.

If B accepts the final decision, Advanced Payment Solutions Limited must carry out the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 5 December 2023.

Adam Charles  
**Ombudsman**