

## **The complaint**

A company, which I'll refer to as T, complains that Advanced Payment Solutions Limited trading as Cashplus Bank ("Cashplus") won't refund an unauthorised payment. Mr B, who is the director of T, has brought this complaint on T's behalf.

## **What happened**

On 25 April 2023, Mr B explains he received a call from a fraudster claiming to be Cashplus. He was told they were calling as two large, unusual payments had been attempted on T's account. He confirmed he hadn't carried these out. He was taken through security checks, with the fraudster emphasising speed to stop the fraud. He was then told he needed to share a six-digit code to confirm his mobile number, which he did as he was under pressure.

It was only when Mr B received a second message with another code that he realised that it wasn't relating to verifying his number. He challenged the fraudster, but the phone line disconnected.

Mr B noticed a payment had debited his account for £18,732 that he said he didn't authorise. He reported this to Cashplus, but it didn't agree to refund him. In the final response letter to the complaint, it said it wasn't refunding him because the payment was verified using a one-time passcode ("OTP").

Unhappy with the decision Cashplus reached to decline a refund, Mr B referred the complaint to our service. One of our investigators looked into the complaint and upheld it. In summary they said as the payment was unauthorised, and Mr B hadn't failed with intent or gross negligence, Cashplus was liable to refund his loss in full and pay 8% per year simple interest.

Cashplus didn't agree. It said it would be willing to refund 50% of the loss and pay 8% per year simple interest. But it refused to provide a full refund saying Mr B lacked due diligence. It explained he advised he had made an error in not reading the OTP message in full which it feels constitutes ignoring an obvious risk. It also adds Mr B claimed he called to report the fraud straight away, but this wasn't true.

Mr B didn't accept the counteroffer Cashplus put forward, so the matter has been 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'm upholding the complaint. I'll explain why.

Mr B reported the disputed payment as being unauthorised, which Cashplus hasn't disputed. For clarity, I'm persuaded the payment was unauthorised as it was carried out by a third party without Mr B's consent. So in line with the Payment Services Regulations 2017

("PSRs"), the relevant legislation here, Cashplus is liable to refund the unauthorised payment unless Mr B failed certain obligations with intent or gross negligence. Of most relevance here is the obligation to take all reasonable steps to keep safe personalised security credentials and to use the payment instrument in accordance with the account terms and conditions.

When I'm considering if Mr B has failed in his obligations with gross negligence, I need to consider that the test isn't simply whether someone was careless. For someone to fail with gross negligence they would need to have seriously disregarded an obvious risk, falling significantly below the standard expected of a reasonable person.

Having considered the PSRs, and the actions Mr B took, I don't think he intentionally failed to keep T's account or security details safe. Nor do I think he has failed in the aforementioned obligations with gross negligence. I'll explain why.

Mr B received a call from someone that claimed to be from Cashplus, who T banks with. He was told they were calling as two large, unusual payments had been attempted on his account. He was then taken through what he thought were security checks (where he had to provide personal information such as his name, address, date of birth and his contact number) whilst being told he needed to act quick to stop the fraud. Given Mr B's company banked with Cashplus, and he was then taken through a security check process, I don't find it unreasonable that he believed he was speaking to Cashplus.

Mr B was then told he would receive a six-digit code that he would need to share to confirm his mobile number. Under time pressure, he said he shared this, after seeing part of the message pop up as a notification on his phone, without reading the full message that was contained within it. I think it's likely a lot of people would have done this in a similar situation having been put under pressure like Mr B had here. I can also see it would have added further weight that he was speaking to who he thought was Cashplus as he was prompted a code would come through, which it did. It appears Mr B was put under a false sense of panic that T's account was at risk and that he needed to act quickly, follow instructions, and provide the code.

In doing so, Mr B was tricked into sharing details with the fraudster which they used to make this payment. I'm persuaded from what he's explained that he took this action without understanding he was breaching the account terms, or failing to keep T's personalised details safe. Instead, he thought the action was to verify his contact number so he could assist in stopping fraud on the account.

Cashplus considers Mr B ignored an obvious risk because he's confirmed he didn't read the message containing the OTP in full. But the test isn't whether Mr B did everything possible to keep his secure information safe. I've considered whether Mr B acted with very significant carelessness, disregarding an obvious risk, in the circumstances.

I don't think Mr B seriously disregarded an obvious risk in the circumstances. It's common for victims of fraud to reflect on what they could have done differently after being scammed, but it's important to assess the circumstances of what happened at the time. And having thought about this, I'm persuaded he believed he was following steps he thought was to verify himself, and to protect his account. I think a lot of people would take the steps Mr B did in the circumstances and so I don't think Mr B has fallen so far below the standard expected of a reasonable person such that his actions amount to gross negligence.

Cashplus also raised a point that it didn't agree with Mr B's statement that he called to report the fraud straight away. It says Mr B took two hours to report the fraud which affected its ability to stop the payment. This involved a card payment and after having the opportunity to

do so, Cashplus hasn't explained why it thinks it would have made a difference if Mr B had made it aware sooner. I'm not persuaded it would be fair to hold Mr B liable on this basis.

Taking everything into account, I'm not persuaded Cashplus has shown Mr B failed in his obligations with intent or gross negligence. So in line with the PSRs, I'm satisfied Cashplus is liable for the unauthorised payment. It should also pay compensatory interest to reflect the time T has been without its money. Other than that, I haven't been provided with any evidence of other losses incurred by T as a result of Cashplus's error.

### **My final decision**

For the reasons I've explained, I uphold T's complaint. Advanced Payment Solutions Limited trading as Cashplus Bank must:

- Refund T the total of the unauthorised payment, less any amount recovered or already refunded.
- 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 T to accept or reject my decision before 12 June 2024.

Timothy Doe  
**Ombudsman**