

## **The complaint**

Mr H, on behalf of B, complains that Zempler Bank Limited, trading as Cashplus Bank, will not refund £17,145 that was lost as the result of a scam.

A representative has brought B's complaint to this service for Mr H. For ease of reading I will mostly refer to Mr H in this decision.

## **What happened**

As both parties are aware of the details of this scam I will not repeat them in full here. In summary, Mr H fell victim to a bank impersonation scam. On 12 June 2023 he received a call he believed to be from Cashplus. He was told there were unauthorised transactions pending on his account but if he shared the OTPs (one-time passcodes) the bank could prevent the payments from debiting his account. Subsequently two card payments to different merchants, for £13,295 and £3,850, debited his account. When Mr H realised he had been scammed he reported this to Cashplus. This was on 14 June 2023.

Mr H says Cashplus did not do what it should have to protect B's money. And it did not provide any education on how to avoid future scams.

Cashplus says Mr H provided the scammer with the one-time passcodes for the MasterCard 3D secure process. This allowed the scammer to authenticate the transactions and for the funds to be taken. It has systems and controls in place for the identification of fraud and the protection of customers. However, it did not agree that these payments should've been identified as high risk and stopped.

Our investigator did not uphold B's complaint. He said the transactions were not sufficiently unusual or out of character for B's account such that they indicated likely financial harm. So Cashplus cannot fairly be held liable for B's losses.

Mr H disagreed and asked for an ombudsman's review. He said the transactions were to two new payees of high value, one of which was the highest value payment made out of the account in at least 12 months. This activity was outside his usual spending behaviour. It also important to note that the account balance fell sharply as a result of the scam payments.

## **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.

There's no dispute that Mr H authorised the payments. And Mr H knew why he was authoring the payments. At the stage he was doing, he believed there were pending unauthorised payments on the account and that by providing the OTPs he would be allowing the bank to stop these transactions. I don't dispute Mr H was scammed and he wasn't authorising the payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Cashplus has an obligation to follow Mr H's instructions. So in the first instance Mr H is presumed liable for the loss. But there are other factors that must be taken into account.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. This means I think that Cashplus should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

Certain scams are also covered under the Contingent Reimbursement Model code. But Cashplus is not a signatory to this voluntary code. And in addition, that code covers 'push' payments. Here, the transactions were card payments and this means they are classified as 'pull' payments. So the principles of the CRM code would not have applied even if Cashplus was a signatory.

But this does not change Cashplus' obligations to work to protect its account holders from fraud, amongst other risks. This means in this case I have to decide whether the bank ought to have intervened and paused any of the payments until it had made contact with Mr H. I don't find that it should have. I'll explain why.

Cashplus has supplied the transaction history for the lifetime of B's account. It was opened in May 2017. This was a business account and there were regular payments in the thousands of pounds. Mr H argues these were direct debits to HMRC, but I can also see payments for travel and other taxes. That aside, I don't think the method of payment the payee negates the fact that there was a history of similar value payments to payment 2 from the account.

Mr H also argues that payment 1 was the highest in value for 12 months. I accept it was higher. But a higher value alone is not automatically an indicator of possible risk of financial harm. It is not uncommon for account holders to make one-off high value payments. The payment was also authorised using 3D Secure, so it was reasonable Cashplus would have been reassured that it was Mr H making the payment himself. Mr H also raised that the payment depleted the account balance, but this was not first time the account had a balance in the low hundreds of pounds.

There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. In this case, in the round, I cannot fairly conclude that Cashplus ought to have intervened in either of the transactions or to have reasonably suspected Mr H was the potential victim of financial harm.

I have then thought about whether Cashplus did enough to try to recover B's money when Mr H reported the scam. As the payments were made by debit card it could have looked to raise the dispute as a chargeback. In certain circumstances card issuers (so here Cashplus) can request refunds from merchants by raising a chargeback claim – but there's no

obligation on an issuer to do this. This system has rules which means there are only certain grounds under which a chargeback can succeed. So in this case I need to decide whether Cashplus acted fairly and reasonably in its decision not to present chargeback claims on behalf of B.

Cashplus said any chargeback claim would have been unsuccessful as the transactions were authorised using 3D Secure. In addition, given the fraudulent nature of the transactions Mr H had no evidence to support the payments, such as an agreement, invoice or order form. And the merchants most likely would have had evidence of delivery – albeit to the scammer. So, overall, I think Cashplus's decision not to raise chargeback claims to try to help Mr H recover the payments was fair in the circumstances.

Finally, Mr H says Cashplus did not provide any education on how to avoid future scams. I can see in its final response letter it confirmed that it regularly sends guidance to its customers on how to protect themselves, warning them of common scams that might try to obtain security details from them. Such information is also available on its website. Both its emails and the website also reminds customers that Cashplus will never ask a customer to share security information and educates regarding common phone scams. So I am satisfied it has provided relevant educational information to Mr H.

I am sorry for the situation Mr H finds himself in. B has been the victim of a cruel scam and has lost money as a result. But this loss was caused by the scammer – and not Cashplus. And as I have not found that it acted in error when processing the payments, or by not raising chargeback claims, I cannot fairly hold it liable for B's loss.

### **My final decision**

I am not upholding B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H on behalf of B to accept or reject my decision before 16 January 2025.

Rebecca Connelley  
**Ombudsman**