

## **The complaint**

P, a limited company, complains that Zempler Bank Limited (trading as Cashplus Bank) didn't do enough to stop them falling victim to an email intercept scam.

P is represented by a director, Mr O.

## **What happened**

The background to this complaint is known to both parties, and the facts aren't in dispute. So, I will cover it only briefly here.

P holds an account with Cashplus, and they make regular payments through it. In September 2023 they received an emailed invoice from a supplier, asking for payment to be made to updated bank details. Mr O set up two payments – one of £25,000 and then one of £10,292.42 – to pay the invoice.

Cashplus flagged the second payment for review and texted Mr O to get in touch with them. When he called the next morning the payment was released.

Several days later Mr O discovered that the supplier's email hadn't been genuine, and instead he'd sent the payments to a scammer. He contacted Cashplus, who in turn contacted the receiving bank, but by this time the funds had been dispersed.

Mr O complained to Cashplus on behalf of P. He said the recipient account name didn't match that was entered on the payment details, so this should have been flagged. He didn't think P should be held liable for the loss.

Cashplus responded to say that they had no obligation to refund P. They said they have systems in place to monitor for high risk transactions, and regularly undertake checks to ensure the instruction is genuine. In this case they'd contacted the receiving bank right away, but the funds had already gone.

Unhappy with this answer Mr O referred P's complaint to our service. One of our investigators looked into it and thought it should succeed. They reasoned that as the second payment was flagged as high-risk, then the first should probably have been questioned further. They felt the intervention by Cashplus wasn't sufficient, as no questions were asked, or warnings given. They felt if Mr O had been encouraged to check the payment details with the supplier, then the scam would likely have been uncovered. They suggested Cashplus refund the losses, plus add 8% simple interest per annum to that sum.

This was accepted by Mr O, but Cashplus disagreed. They said at the time Mr O called they deemed the payment to be within the usual activity of the account, so released the funds. But the investigator still didn't think this was enough.

As no agreement could be reached the complaint 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.

### *The Payment Services Regulations*

The relevant regulations around payments are the Payment Services Regulations 2017 (PSRs). Broadly, these outline that the primary duty of a payment service provider – such as Cashplus – is to process any authorised transactions promptly. The bank will generally only be liable for refunding unauthorised or incorrectly executed transactions. This is reflected in the terms of P's Cashplus account.

In this case there's no dispute that Mr O correctly authorised the transactions to who he thought was P's genuine supplier – so under the PSRs there's no specific obligation on Cashplus to refund P. The starting position therefore is that Cashplus aren't liable for these transactions.

### *Could Cashplus prevented the transactions?*

But, Cashplus still have legal and regulatory obligations to monitor accounts for signs that a customer may be falling victim to financial harm – such as fraud and scams. The expectation from industry guidance is that they have an appropriate set of procedures of controls to identify potentially fraudulent payments, and to be able to take action accordingly. There is provision for this in the terms of the Cashplus account, where it outlines that they may refuse to make payments if a payment is suspicious or could be illegal. So, a reasonable expectation would be that Cashplus find out more about any unusual activity on the account, to better understand what's happening.

In this case we know that Cashplus held up the second transaction for £10,292.42 because of concerns about it – which shows they considered it a high risk transaction. The bank haven't been able to articulate a reason I find to be satisfactory about why the second payment was a higher risk and required intervention, but the first did not. I'm persuaded that it would have been reasonable for the first payment of £25,000 to have been held at the same time, and Mr O asked to contact Cashplus to discuss it.

Any intervention should be proportionate to the risk, and the activity on the account. I recognise there is a balance to be struck between allowing a customer to transact freely and reviewing transactions for signs of fraud. I've also considered what Cashplus have said about P's account having over 700 payments held previously, and notes of Mr O being frustrated by this process in the past. But I don't see that this will extinguish any responsibility to investigate payments that are out of character, or particularly high risk.

I've listened to the call between Mr O and Cashplus when the payment was released. In the call there is no discussion about the payment itself, or its intended purpose. It was just released after Mr O called. Cashplus have argued that the payment itself didn't appear to be unusual based on the activity of P's account, so didn't conduct any further investigation.

Looking at the account statements, I accept that P makes a high volume of transactions on the account, often to new payees. But as I think the £25,000 payment should have been questioned, I see that this differs in several regards.

Firstly, this seems to be the max limit for transfers at a time – although I note there have been higher value transactions to HMRC previously. But, £25,000 is still higher than most

transactions and it is much rarer for this amount to be transferred, followed by a second amount almost right away.

Secondly, the payment was going to another business account. Because of P's business model most payments are going to individual's personal accounts. Looking back through the statements for the previous six months payments to business accounts tend to be rarer and of lower value was made here. The last time a payment of £25,000, followed by another payment to the same supplier was in May 2023. So, I see that while P's account has a high number of outbound payments, this type of payment is rarer and more unusual.

I'm satisfied then that the intervention should have been more focused on the nature of the transaction, and where the payment details had come from. I note from the call where Mr O reported the fraud, Cashplus immediately picked up on the fact that P had received an email from the merchant with payment details, followed by a second email updating the payment details. This is a common feature of email intercept scams. The advice from the bank was to contact the merchant by a trusted channel.

Had this conversation happened when Mr O rang up before the payment was released, then I have no reason to doubt he would have contacted the merchant through a trusted channel before agreeing for the payment to be released. In that event the loss would have been prevented.

In summary, I'm persuaded that Cashplus should have intervened before releasing the first payment of £25,000. And had they done so, I see that a proportionate intervention would likely have uncovered the scam before any losses. On that basis, I don't see it's unreasonable for P to ask Cashplus to refund the losses.

As P has been without the use of these funds, when they reasonably should have had them available, I see it's appropriate for Cashplus to pay 8% simple interest per annum on this amount, from the date of payment to the date of settlement.

*Did Cashplus do enough to recover the funds?*

I'm satisfied that Cashplus contacted the receiving bank promptly after they received the fraud report from Mr O. Unfortunately, by this time the funds had been largely moved on.

The receiving bank has shown us that only £9.16 remained by the time Mr O reported the fraud. I can't see that this amount has been refunded to P, but in any event since I see that Cashplus should refund the full amount I don't see that I need to make a finding on this. Overall, I can't see that Cashplus did anything wrong in their attempt to recover the funds.

*Should P bear any responsibility for the losses?*

I've also considered whether P should also bear some responsibility for the losses – whether the actions of P or Mr O were unreasonably negligent in choosing to make the payment. The terms of the account state that it is up to P to ensure the payment details are accurate.

The invoice here wasn't unexpected, and Mr O had interacted with the merchant in person. When the scammer sent the second set of payment instructions to Mr O it certainly looks like it comes from the merchant's legitimate email address, and the document providing the fraudulent details matches the legitimate instructions he'd received previously.

The explanation provided by the scammer wasn't particularly convincing, but unless Mr O was on notice to look out for scam, I'm not persuaded he reasonably ought to have looked in to this further at the time. I have considered the warning presented to Mr O during the

payment process isn't specific to the type of scam he was falling for, so I don't see it would reasonably have made a difference.

Ultimately, I'm not persuaded that Mr O's actions meet the standard for contributory negligence. As such, I don't see it would be reasonable to make a deduction to the redress on this basis.

### **My final decision**

My final decision is that I uphold this complaint and direct Zempler Bank Limited to:

- Refund P the £35,292.42 lost to the scam
- Add 8% simple interest per annum to this amount from the date of payment to the date of settlement

If Zempler Bank considers that they are required by HMRC to deduct tax from the interest awarded, they should tell P how much has been taken off. They should also give P a tax deduction certificate if they ask for one, so they can reclaim this tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 6 September 2024.

Thom Bennett  
**Ombudsman**