

The complaint

Mr O complained because Advanced Payment Solutions Limited, trading as Cashplus Bank, refused to refund him for transactions which he said he didn't authorise.

What happened

On 17 September 2023, seven payments debited Mr O's Cashplus account. These were to two organisations abroad. Six were to the same recipient company, and one to another company. Cashplus also charged transaction fees and foreign exchange fees, and the total came to £992.29.

When Mr O saw these, he got in touch with Cashplus and said he hadn't authorised them. Cashplus replaced Mr O's card, and credited his account with the transactions and fees while it investigated.

Mr O is retired, lives in the UK, and is housebound. He has a carer coming in once a week, and a neighbour who sometimes takes him meals.

On 11 December, Cashplus wrote to Mr O. It said the merchant had provided documents which meant that Cashplus was holding Mr O liable for these. So Cashplus told Mr O that it had re-debited three £25.29 transactions. In fact the amounts Cashplus had debited were for three £25.84 transactions totalling £77.52, not three £25.29 transactions. Cashplus also debited what it said was a charge for a £20 administration fee.

Mr O complained. He told Cashplus that his name had been mis-spelt multiple times on the merchant's document which it had sent him. He also pointed out that there was no indication of the goods he had supposedly bought. He said he hadn't even heard of the company until they'd taken a lot of money out of his account in September, and he'd looked them up online. He said the company appeared to be a scamming ticket company who charged exorbitant fees for events abroad, and they appeared to be crooks. He was shocked and disappointed that Cashplus had failed to spot this. He said this had caused him alarm and distress.

Cashplus sent Mr O its final response to his complaint on 3 January 2024. It said that it had received documentation from the merchant, with details that matched what it held on his account. So it believed that Mr O knew about the transactions. It refunded the £20 administration fee, but refused to refund him for the disputed transactions.

Mr O wasn't satisfied and contacted this service. He explained his circumstances to our investigator, and said he doesn't attend any sporting events, concerts, or other events. He also said he hadn't been abroad since 2019, because of his health.

Our investigator asked Cashplus for much more information about the disputed transactions. This included asking for:

- the computer evidence showing the transactions, indicating that the disputed transactions were authorised and authenticated, including a key for any codes. The investigator said this should include evidence of how the payments were made (eg

online, in person, chip and PIN etc), and the security steps such as one-time passcodes;

- A full rational explanation why Cashplus had held Mr O liable, including copies of the evidence relied on;
- As Cashplus had said it believed Mr O knew about the transactions, it was asked to send the evidence to support this.

Cashplus didn't reply on all these points. It did send the merchant's reply about one of the three £25.84 transactions, but no information about any others: neither the seven original transactions, nor the other two re-debited transactions. And the merchant's reply about one of the £25.84 transactions didn't and couldn't provide the necessary computer information demonstrating the authentication of the payment. The merchant's reply showed Mr O's name, spelt incorrectly, and the city where he lives and postcode, but no street name or number. Cashplus had said that the merchant had also had Mr O's email address, and I'll deal with that below. The document also says "CVV response not provided" and "street address not provided."

Our investigator again asked Cashplus for information, about why it held Mr O liable, and also asked questions about the merchant's response. But again Cashplus didn't respond. So the investigator issued his view.

The investigator upheld Mr O's complaint. But Cashplus didn't agree. It said that:

- Cashplus had issued a chargeback to the merchant and the merchant had responded with three representments, each for £25.29 [this figure isn't correct];
- The merchant had had Mr O's email address which showed that Mr O had a relationship with the merchant. Cashplus said any third party who had compromised Mr O's details wouldn't have known Mr O's contact details; Cashplus said it hadn't reviewed the rest of the information in the representments, because of the email match;
- Cashplus said it didn't have "*an open channel of communication with the merchant*" so it couldn't ask for any more information. It said the matching email meant that it believed Mr O had been involved.

Cashplus asked for an ombudsman's decision.

My provisional findings

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision.

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

Regulations

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. I've set out the relevant regulations below, with a key part in bold underlined. The "*payment service provider*" here means Cashplus.

Regulation 75 of the Payment Services Regulations 2017

(1) *Where a payment service user*

(a) *denies having authorised an executed payment transaction...*

It is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider's accounts and not affected by a technical breakdown or some other deficiency in the service provided by the payment service provider."

Regulation 67 of the Payment Services Regulations 2017

- (1) *A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to -*
 - (a) *the execution of the payment transaction...*
- (2) *Such consent*
 - (b) *Must be given in the form, and in accordance with the procedure, agreed between the payer and its payment service provider."*

This means that what determines the outcome here is that it's Cashplus's responsibility to provide evidence that the disputed transactions were authenticated etc. There also needs to be clear evidence that the customer has consented to the payment.

What this means for Mr O's complaint

In my provisional decision, I explained that Cashplus hadn't provided any of the required evidence that any of the seven original disputed transactions, or the three represented ones, were authenticated. Authentication is the technical part, and we'd expect to see detailed computer audit trail evidence. Nor had it provided any evidence of authorisation, and again we'd expect to see clear evidence that it was more likely than not that the customer had authorised the disputed transactions. A chargeback response, especially one with the limited and inaccurate details about Mr O, doesn't meet this regulatory requirement.

Our investigator gave Cashplus several opportunities to provide this, but it didn't provide any evidence of authentication as required under the Regulations. It also didn't provide any evidence that Mr O, as opposed to a third party fraudster, had authorised the transactions.

Cashplus only provided a chargeback response, and only for one of the transactions. Even if this had been a better quality response, it couldn't have met the authentication requirements. And what was actually provided boiled down to Mr O's name mis-spelt, and the city and postcode where he lived but no street name or property number. The document ticked a box saying "*passenger transport proof ticket received, scanned at gate or other information eg frequent flyer miles*" – but there was no clarity on what this meant, and Cashplus didn't reply when our investigator asked.

Cashplus argued that it based its decision to refuse Mr O's complaint on the fact that the email address matched. But in fact it doesn't match. Mr O's email address (as supplied to us and to Cashplus) has a dot between the first two parts of his name, and the merchant's version had an underscore instead. So there isn't even an email match as Cashplus claims. And in any case email addresses are relatively easily obtainable. Cashplus didn't supply any evidence that this different email address was used either by Mr O to the merchant, or the merchant to Mr O. As it wasn't correct for Mr O, it would have bounced if it had been attempted.

Chargebacks

Cashplus based its decision on a chargeback. A chargeback is the process by which settlement disputes are resolved between card issuers and merchants under the relevant card scheme. Chargeback schemes are voluntary codes, decided according to the scheme rules. Some financial organisations choose to use chargebacks where there is a disputed transaction. But chargebacks alone aren't a full substitute for all of a payment services

provider's responsibilities under the Payment Services Regulations 2017 and the Consumer Credit Act 1974. In other words, what matters here is still the key issue of whether or not Mr O authorised the disputed payment – not the representment claim by the merchant.

In fact the representment document is flawed even as a representment document, for the reasons I've set out above.

So, in summary, what really matters is evidence of authentication and authorisation, which is lacking, but even Cashplus' alleged chargeback evidence is flawed.

Mr O's circumstances and the recipient organisation

In my provisional decision, I said that I'd also expect Cashplus to have taken Mr O's circumstances into account when conducting its fraud investigation into whether he was more likely than not to have authorised the disputed transactions.

The recipient organisation was a foreign ticket outlet for sports and entertainment events abroad. Mr O is retired, and housebound with a carer visiting. So it was intrinsically improbable that Mr O would have suddenly decided to buy multiple tickets for sports and entertainment events abroad. I saw no other evidence of any other similar purchases on the statements I had for his account.

Mr O also pointed out to Cashplus that there are very critical online reviews of the recipient organisation, which he said had a reputation as a scamming ticket agency. It's not for me to comment on an individual company, but in the light of online reviews, I couldn't understand why Cashplus appeared not even to have seriously considered that Mr O might not have authorised the disputed transactions.

I also noted that Cashplus charged Mr O a £20 admin fee for raising his dispute. I see that it refunded him for this, and if it hadn't done so, I would have ordered this to be refunded.

Who is liable under the Payment Services Regulations?

For all the reasons above, I found that it was most unlikely that Mr O authorised the disputed transactions. So Cashplus is liable and I said in my provisional decision that I intended to order Cashplus to refund him. I also said I intended to order Cashplus to pay interest on the disputed transactions at 8% from the date of debit on 11 December 2023, to the date of settlement.

Customer service

I considered that Cashplus treated Mr O, who said he was a long-term customer, poorly. It didn't properly investigate, when it should have been clear from the outset that an older housebound customer in the UK was most unlikely to have authorised multiple live entertainments abroad from a company with very poor online reviews.

The original fraudulent debits totalled £992.29, which was a lot of money. Although Cashplus refunded this promptly while it investigated, the fact that it then allowed three of the original payments to be re-debited would have been worrying for Mr O. Six of the original seven payments were to the same company, and it must have seemed likely to Mr O that Cashplus would allow all of these to be re-debited, when he hadn't authorised them.

I also noted that, as I've set out above, in Cashplus's 11 December letter, it charged Mr O a £20 admin fee for having raised the dispute. Although it subsequently refunded him, I

consider this would have been frustrating and upsetting for Mr O, when he'd been telling the truth about the transactions.

Mr O also told Cashplus that he was hurt and upset by the way it had treated him. I considered that Cashplus should have provided Mr O with better customer service. It should have investigated the transactions in his complaint properly, and should have taken into account the inherent improbability of this long-term older customer authorising these particular transactions. So I said I also intended to order Cashplus to pay Mr O £100 compensation for its poor customer service.

Responses to my provisional decision

Cashplus said it accepted my decision. It said its fraud team had reviewed its decision and had refunded three £25.29 transactions. It didn't comment on the interest or compensation. And in fact, as I've set out above, the amounts it debited were for three £25.84 transactions, not three £25.29 transactions as it had put the wrong figure in its 11 December letter to Mr O.

Mr O accepted 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.

Having done so, I see no reason to depart from my original conclusions.

My final decision

My final decision is that I uphold Mr O's complaint.

I order Advanced Payment Solutions Limited, trading as Cashplus Bank, to pay Mr O:

- £77.52, representing the three £25.84 payments it debited on 11 December 2023. I note that Cashplus said it has refunded Mr O with three £25.29 payments, but I have seen no evidence of this and it is in any case the wrong figure. Cashplus must adjust whatever it has refunded Mr O so that it pays him a total of £77.52 for the fraudulent payments; and
- Interest at 8% on £77.52 from 11 December 2023 to the date of settlement; and
- £100 compensation for the distress and inconvenience it caused him.

If Cashplus deducts tax from the interest on the award, it should provide Mr O with a tax deduction certificate to show how much it has deducted, in order to allow Mr O to reclaim the tax from HMRC if appropriate to his personal circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 8 July 2024.

Belinda Knight
Ombudsman