

The complaint

A limited company, T, complains that Zempler Bank Limited trading as Cashplus Bank (as the recipient bank) didn't do enough to prevent the loss it suffered when it sent a payment to one of its accountholders as the result of a scam.

Mr K is a director of T and has brought the complaint on its behalf. He initially used a representative when doing so. For ease of reading, I'll mostly refer to Mr K, where I mean him, his company, or the representative.

What happened

The background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr K says he was the victim of an 'impersonation scam'. At the time he believed he was dealing with Mr M, the director of a genuine limited company. He later discovered the person he'd been communicating with had been impersonating Mr M. Across September 2023 and October 2023, Mr K made 8 payments totalling just under £16,800 as a result of the scam. These payments were made to various individuals who held accounts with different payment service providers (PSPs). Mr K has asked our service to also investigate complaints about his own bank, who I'll refer to as 'B' and the other recipient PSPs. These are being considered separately and under different complaint references. This complaint only relates to a payment of £5,000 which was made from T's account with B to an account held with Cashplus.

Mr K complained to Cashplus. He said that it had likely failed: to meet its obligations when allowing its customer's account to be opened; in its monitoring of the recipient account; and in its response when notified of the fraud. Mr K asked Cashplus to refund his loss and pay 8% annual interest from the date of payment to settlement.

Ultimately, Cashplus didn't reimburse Mr K's lost funds and he referred his complaint to us. Our Investigator didn't recommend that the complaint should be upheld. In summary she concluded that there had been no failure by Cashplus in the opening and monitoring of the recipient account which had resulted in a loss to Mr K, and that his funds had already been paid away before Cashplus was notified of the scam. However, whilst investigating the complaint she'd noticed that in January 2024 some of the funds which had been paid away by the recipient accountholder to a third party had supposedly been returned by the third party's PSP. Our Investigator recommended that if Mr K hadn't received these funds (just under £600), he should contact B.

Mr K did not accept the Investigator's assessment and asked that an Ombudsman review the matter.

Having reviewed the case, I agreed with most of what of our Investigator had said. But I didn't agree with what had been said about the funds which had been returned to the recipient account in January 2024. So, in an attempt to resolve matters at the earliest possible stage, I wrote to both Mr K and Cashplus explaining my thoughts on this, and shared the reasons for why I couldn't uphold this complaint. I said:

"Firstly, in circumstances such as these where [Mr K] has no direct relationship with Cashplus, and the complaint is about a third-party account into which he was tricked into transferring funds as a result of alleged authorised push payment (APP) fraud. I can only ask Cashplus to refund its loss if I think it has failed in such a way that it can fairly and reasonably be concluded that Cashplus' act or omission (for matters within our jurisdiction) caused the loss or it is otherwise fair and reasonable for them to do so. I think it's important for me to share that an account later found to have been utilised to receive fraudulently obtained funds doesn't automatically entitle the payer (here [Mr K]) to a refund from the recipient PSP nor does it mean that that receiving PSP has reasonably failed to prevent the loss incurred.

So when considering complaints of this nature, with the benefit of hindsight, it's often easy to say the recipient PSP ought to have identified the account was being opened to misappropriate funds, that the activity on the account was fraudulent and that it ultimately should've done more to prevent the loss, or even that it could've done more to assist in the recovery of the funds upon receipt of notification of fraud. However, I must be clear, when deciding this complaint, I need to think about what Cashplus knew at the time – not what is known today. And where it is supposed (as is the case here) that Cashplus didn't do enough. My role is to look into the individual circumstances of the case and decide, based on what I have seen, whether it should have fairly and reasonably done more.

Account opening

I'm persuaded that Cashplus carried out checks (electronically) to verify the identity of the accountholder and did its due diligence (so far as reasonably possible) when opening the recipient account. From what I've seen there was nothing at the time that I think reasonably could've alerted Cashplus that the account it was opening would later be used to receive fraudulently obtained funds. So I don't think it missed an opportunity to prevent [Mr K's] loss when opening the recipient account.

Account monitoring

As I've mentioned above, naturally with the benefit of hindsight it's easy to say Cashplus ought to have done more. But when reviewing such matters, I must think about what was known to Cashplus at the time – not what we know today. I must also have regard to the significant volume of transactions that take place daily; it simply wouldn't be practical for Cashplus to stop and check each and every payment it accepts onto, or that leaves, its customer's accounts – especially if it's not sufficiently suspicious or unusual in the context of the account activity. Its systems and controls have to strike a balance between monitoring accounts with a view to preventing fraud without unduly hindering its customer's general use of their accounts.

Taking this into consideration, I'm not persuaded that receiving a sum of £5,000 would have been a reason for Cashplus to block or / restrict its customer's use of their account or ask that they provide evidence of source of funds. The account was newly opened and as such receipt of money into the account in and of itself is not unexpected. Prior to [Mr K's] funds arriving there wasn't any suspicious activity on the account (just a few small transactions); there had not been any reports or notifications of fraud in relation to the account. There wasn't a beneficiary name mismatch for [Mr K's] payment. By this I mean the name on the account matched the name provided on the payment instruction. From what I've seen there also wasn't any information available to Cashplus that would indicate a potential issue with the payment [Mr K] had sent. I note [Mr K] has also stated that the money being moved out completely from the account by the time the fraud was reported should have raised alarm bells. But again, the purpose of bank accounts is to receive and pay away funds, so this alone wouldn't have been a basis for Cashplus to have had concerns. There also wasn't anything particularly suspicious about the payments leaving the account either.

I appreciate [Mr K] has raised some points around mule accounts. But I've seen no evidence to support this to be the case here. So even if I were to agree (which to be clear I don't for the reasons above) that Cashplus ought to have intervened before allowing funds to leave the recipient account, on balance, it's most likely a plausible explanation for the activity would've been given by the accountholder to gain access to the funds. And in these specific circumstances I don't think there would have been any reason (at that point) for Cashplus to have had an objective basis for not making payments its customer had asked it to make or to otherwise have needed to have done more. This is particularly the case in the absence of any reports or notifications about the account, the named payee on [Mr K's] payment instruction matching the accountholders details and nothing which at that point substantively indicated misappropriation of funds.

Response to notification of fraud

Our Investigator said in her assessment: "However I can see that in January 2024 some of [Mr K's] funds that were sent to a third party from the beneficiary account were returned. I checked with Cashplus on this and they confirmed they will raise an indemnity with [B]. It appears that the recoverable funds are £597.03. If [Mr K] has not received these funds I would recommend he contacts [B] to follow up on this."

Having reviewed the evidence on file I don't agree with what our Investigator has said about recovered funds. I'll explain below why.

I'm satisfied that by the time Cashplus received notification of fraud from [B], [Mr K's] money had already been utilised. So the update it gave at the time to [B] was correct that no funds remained.

I agree some funds were received by Cashplus in January 2024 which were intended for the recipient account but there's no evidence to support that these were in fact recovered funds. The evidence shows that [Mr K's] funds were received and paid away in October 2023. Then it appears as though a payment of £600 was received several months later in January 2024. Cashplus have advised us that they've tried to return these back to the sender (not [Mr K]), but they haven't been successful in doing so. Taking this altogether, I don't think Cashplus have acted unfairly or unreasonably by not returning these funds to [Mr K] given that 1) they've originated from someone else's account; 2) there is no evidence to link [Mr K's] payment and the funds which were received into the recipient account several months later; 3) the possibility that several parties could have a claim to those funds.

I appreciate this will likely come as a disappointment to [Mr K]. However, in these circumstances, I can't ask Cashplus to do anything more to resolve this complaint."

Cashplus didn't respond, and Mr K still didn't agree. I've addressed his further comments 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.

Ultimately, I'm not persuaded to change my mind from the outcome explained in my intended decision (as set out above) and for the same reasons.

I take on board Mr K's comments that once a scam has been reported banks should promptly investigate and close the account to limit any further misuse. It's not that I disagree with the principal of what Mr K is saying. Of course, when put on notice, banks like Cashplus should be carrying out an investigation, and where relevant taking steps to ensure that the account in question isn't further used to misappropriate funds. I note Mr K thinks Cashplus failed to do this. But even if I were to agree with him that Cashplus ought to have acted sooner than it did after receipt of notification of fraud, in these circumstances it still doesn't mean I can direct it to refund Mr K's loss, because I can only do so, if I'm satisfied that it can fairly and reasonably be concluded that Cashplus' failing was the cause of it. And here I can't say that it was as Mr K's money had been paid away before the scam had been reported.

I also appreciate from Mr K's perspective Cashplus ought to have done more in reporting the individuals to the appropriate authority and tracing the money / others who were complicit. But it's not Cashplus' role to investigate crime, that is for the police to do. It also isn't Cashplus' responsibility to report this to the police. It is for the victim of crime – here Mr K, to report the matter. I'd expect Cashplus to co-operate with the police – including the sharing of any information if they were to request it. I've not seen any evidence of the police being in touch with Cashplus or which shows it has failed to co-operate with police enquiries.

I've already explained when I wrote to Mr K that there is no evidence to support that this was a mule account. We'd expect unwitting mules to respond once accounts have been blocked / closed. There is no evidence of this happening. So on that basis any warnings Cashplus would've provided (written or otherwise) I think its most likely, on balance, that the accountholder would've continued with the payments and / or if spoken to, would have given a plausible explanation for the origin and reason for moving the funds. I appreciate Mr K thinks asking the question would have been a part of an appropriate investigation by Cashplus, and if it had delayed the transaction or had it raised any red flags this may have prevented loss of his funds and stopped the scam. But in hindsight this is easy to say, at the time for the reasons I've already explained, firstly I don't think there was a basis for Cashplus to have intervened. And even if it had it can't refuse to make a payment its customer has asked it to make unless it has reasonable grounds to take such action, and based on what was and / or likely would've been known to Cashplus at the time I'm not persuaded it would have had a meaningful reason to do so.

Despite my natural sympathy for what has happened here, for the reasons I've explained, I'm not going to require Cashplus to do anything further to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 24 April 2025.

Sonal Matharu
Ombudsman