

## **The complaint**

Mr R, on behalf of Q, complains that Zempler Bank Limited, trading as Cashplus, will not refund £15,000 it lost as a result of an APP (authorised push payment) scam.

Mr R brought Q's complaint to this service through a representative. For ease of reading I will refer solely to Mr R and/or Q in this decision.

## **What happened**

As both parties are familiar with the details of this scam I won't repeat them here in full. In summary, Mr R fell victim to an impersonation scam on 9 December 2023. He was contacted by a scammer pretending to call from Cashplus. They told him his business account had been compromised. Believing Q's money was at risk Mr R made two faster payments out for £15,000 and £9,900 as instructed by the scammer. Mr R quickly realised it was a scam and called 'lost and stolen' at the bank. It was able to stop the payment for £9,900, but told Mr R to call back the next working day to speak to its fraud team about the other transactions.

Mr R says Cashplus ought to have questioned the payments before processing them. This would have prevented the fraud as it would have become obvious it was not the bank calling him and telling him to move his money. And if it had acted faster, rather than telling Mr R to call back, the money could have been recovered from the scammers account. The business cannot afford this loss and it has impacted Mr R's personal circumstances and family.

Cashplus says the transactions were consistent with the type of transaction that would be expected from Mr R's business account – it regularly receives high value credits, prior to there being transfers out. It contacted the receiving bank but no funds remained. The retrieval of funds after reporting a scam cannot be guaranteed.

Our investigator did not uphold Q's complaint. He said the transactions were not out of character for Q's account. And whilst Cashplus did not contact the receiving bank until 11 December 2023, the money would most likely already have been withdrawn had it acted sooner.

Mr R disagreed and asked for an ombudsman's review. He said the transactions were unusual and to a new payee so should have been checked. And if Cashplus had acted immediately when Mr R called on 9 December 2023 it would have had a better chance of recovering the money. So is at fault in this regard.

## **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 am not upholding Q's complaint.

There's no dispute that Mr R made and authorised the payments. Mr R understood why

he was making the payments and where he was sending the money to. At the stage he was making these payments, he believed he was moving money to a safe account in order to protect it as Q's account had been compromised. There has been some discussion about the model of phone used to provide the payment instructions, but what matters is that Cashplus has confirmed the device used to authorise the payments was the same device that has been registered on the account since 2022. There have been no changes to trusted devices, and no new devices logged.

I don't dispute Mr R was scammed and he wasn't making the transfers for the reasons 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 R's instructions. So in the first instance Mr R is presumed liable for Q's loss. But, taking into account relevant law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable in December 2023 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.
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- 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.

To note, Cashplus has not subscribed to the Contingent Reimbursement Model (CRM) so the principles of that code do not apply in this case.

In this case I don't think Cashplus ought to be held liable for the £15,000 transaction. I'll explain why.

I don't find this payment ought to have triggered Cashplus to intervene prior to processing. For me to find it should have intervened I would need to be satisfied that there were characteristics that indicated there was a risk of financial harm, not just that it was different to usual. This was a business account and in that context a one-off payment that was higher than the typical range need not automatically be seen as suspicious. And there were frequent four-figure debits from the account. It was to a new payee but Mr R was presented with a new payee message that included scam warning wording. The payment did not drain the account balance. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

So, in the round, I cannot fairly conclude that Cashplus ought to have intervened in the transaction or to have reasonably suspected Mr R was the potential victim of financial harm.

I have then looked at whether Cashplus did what we would expect when trying to recover Q's money.

I don't find that it did, but had it done so that would not have changed the outcome for Q. I'll

explain why.

There are long-established best practices in place for the recovery of funds lost to a scam. These were introduced by UK Finance in 2018 as the Best Practice Standards (BPS). And, whilst firms can choose whether to sign-up to the BPS or not, they have become the expected industry standard, even where a firm isn't a signatory. That means they ought to be adhered to by all relevant firms, including Cashplus.

The BPS states that, where a scam has been reported, contact with the receiving bank and attempts to recover funds ought to take place immediately. The BPS doesn't give a definition of what immediately means. But I – and this service as a whole – consider that a fair and reasonable interpretation would be for action to be taken within an hour.

Here, Mr R called Cashplus at 18:16 on 9 December 2023. He spoke to the 'lost and stolen' team and his card was stopped, but he was told to contact the fraud team on the next working day, which was the 11<sup>th</sup>. The impact of this was that Cashplus did not attempt recovery until the 11<sup>th</sup> which clearly falls short of the BPS. I don't believe that could fairly and reasonably be described as immediately, either generally speaking or in the specific circumstances of this case. So Cashplus failed to meet the accepted and expected industry standards.

However, in the circumstances of this case the failure to follow those standards did not most likely prevent the mitigation of Q's loss. The firm that received the money has confirmed it remained in the account until 18:45 on 9 December 2023. So Cashplus could have attempted recovery within the timeframe we would expect and still found that no funds remained. This means I cannot fairly conclude its failure to attempt recovery in a timely manner should make it liable for Q's loss.

It follows I am not instructing Cashplus to refund any money to Q. This is a difficult decision to make, I'm sorry Q lost a considerable amount of money which was very distressing for Mr R and his family. I can understand why he would like Q to be compensated for the loss. And I do accept Mr R has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find Cashplus can be held liable in the circumstances of this case.

### **My final decision**

I am not upholding Q's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R, on behalf of Q, to accept or reject my decision before 6 March 2025.

Rebecca Connelley  
**Ombudsman**