

## The complaint

B, a limited company, complains that Zempler Bank Limited trading as Cashplus (“Cashplus”) hasn’t protected it from losing money it paid to two of Cashplus’s customers as a result of fraud.

Mr P, a director of B, brings the complaint on B’s behalf.

## What happened

On 28 May 2025 I issued my provisional decision on this complaint. I wanted to give the parties a chance to respond before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

*“The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, in October and November 2022 Mr P, acting for B, was tricked into making payments totalling £207,500 from B’s account (held with a third-party bank, “Bank A”) to two recipient accounts held with Cashplus. Mr P thought he was making the payments to a pension but unbeknownst to him, B’s accountant, whom Mr P was in email communication with, had his emails hacked, resulting in a fraudster being able to trick Mr P into making the payments not to a pension but to the fraudsters instead. Of the payments made, £7,500 was returned to B’s account on 31 October 2022, taking the total loss to £200,000.*

*B raised complaints about both Bank A (its own bank from where it made the payments) and Cashplus. An Ombudsman here issued a final decision in 2023 on B’s complaint about Bank A, but B didn’t accept that final decision. Nevertheless Bank A had already agreed to (and indeed did) refund to B £100,000 (half its loss).*

*B has continued to pursue this complaint about Cashplus to try to recoup its remaining loss. Our Investigator couldn’t resolve the matter informally, so the case has been passed to me for a decision.*

### What I’ve provisionally 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’m minded to uphold this complaint in part. I’ll explain why.*

*Our Investigator suggested B’s payments were for an investment into a personal pension scheme for Mr P (its director), so it is Mr P, and not B, that has suffered the loss. But in the individual circumstances of this case, I don’t think it would be fair to say B hasn’t suffered a loss. When Mr P instructed the payments from B’s account, he was acting with his director’s hat on, acting, in effect, for B in its capacity as employer. The payments were intended as employer contributions. The payments were lost to a scam, so I’m satisfied B has suffered a loss because its contributions did not arrive in the pension and it is consequently out of pocket.*

*I don't think there was anything at the time the Cashplus accounts were opened that reasonably could've alerted Cashplus that the accounts it was opening would later be used to misappropriate funds.*

*I also wouldn't reasonably expect Cashplus to have been able to prevent the loss of B's payments made to the first recipient account. This is because there's a balance to be struck when deciding whether to intervene in customer accounts. Cashplus did intervene in this account on the day it received a fifth payment from B of £7,500. Unfortunately by then funds weren't available to recover, as they'd already been spent away. It seems to me that even if Cashplus had acted more quickly on this (and I'm not saying I necessarily think it should have) B would instead have simply been tricked into paying the second account anyway, meaning the loss wouldn't reasonably have been avoided. So I don't think it's fair to hold Cashplus responsible for B's loss of the first five payments amounting to £37,500.*

*With regards to the second recipient account however, Cashplus didn't intervene like this. But I think it should have. I don't think there was anything that Cashplus knew about its customer that reasonably ought to have reassured it, from the point this second recipient account received B's payment of £7,500 on 2 November 2022 (the sixth for this amount to this account), that the account activity wasn't suspicious. Such that I think Cashplus ought to have, at this point, have had eyes on the account and not allowed any further funds to leave this account until it was satisfied everything was in order.*

*But everything wasn't in order. I haven't seen anything about the way its customer interacted with Cashplus or the details of the payments of this scam that leads me to believe that Cashplus – if it had stopped payments being made from this account from 2 November 2022 onwards – would have received anything from its customer that would have persuaded it everything was okay. So I think it's fair to say that if Cashplus had done what it should have done, the payments that were instructed from this account from 2 November 2022 onwards ought not to have happened.*

*The details provided by Cashplus show that if this had happened, the £37,500 it paid to this second account between 28 October 2022 and 1 November 2022 wouldn't have been recoverable because it was already spent by 2 November 2022. However, the further £125,000 that B paid this account between 2 and 18 November 2022 ought not to have been lost (since this ought to have been recoverable and returnable to B, if Cashplus had acted appropriately as I've said it should have).*

*I've thought about the settlement B has already received from Bank A. I note that the £100,000 Bank A refunded to B was on the basis that Bank A held B partly responsible for its loss as it didn't think B had done enough to check who it was paying before making the payments. I'm also aware that the Ombudsman here who issued a final decision on B's complaint about Bank A thought this was fair. I'm therefore mindful that B has already, in effect, been refunded half of every pound it lost on the basis that it ought fairly be held responsible for the remaining loss. On this basis, of the £125,000 loss above attributed to Cashplus's actions, B in effect has already been refunded half of this.*

*So I think the remaining loss here of the £125,000 I've mentioned is £62,500 (the remaining half). I've thought about whether B ought to bear some responsibility for its loss by way of contributory negligence. And in this case, I agree with both our Investigator and the Ombudsman who issued the final decision on B's complaint about Bank A in 2023 that B ought reasonably to have been more careful about things before it made so many payments, for such a collectively large amount, given the lack of detail given about the purported pension scheme. I appreciate B thought it was dealing with its long-term accountant, but the lack of detail ought to have rung alarm bells, and I can see it did ring alarm bells, and I think*

*B ought not to have just accepted the scammer's answers to some of its concerns but instead been more cautious. In circumstances like this, I'm persuaded it would be fair for B to bear some responsibility for its loss, such that a fair outcome here would be for Cashplus to pay B 50% of the £62,500, and therefore £31,250.*

*I understand that B may be disappointed, as this doesn't cover all of its remaining loss. But for the reasons I've explained, I think this represents, in the individual circumstances of this case, a fair outcome.*

### My provisional decision

*For the reasons explained, I'm minded to uphold this complaint in part and to direct Zempler Bank Limited trading as Cashplus to pay B:*

- *£31,250; plus*
- *Interest calculated on this amount calculated at 8% simple per year from the date of loss to the date of settlement. If Cashplus deducts tax from this interest, then it should send B the appropriate tax deduction certificate."*

B responded to explain why it didn't accept my provisional decision.

Cashplus initially responded to my provisional decision to say that it accepted the decision. But then Cashplus changed its mind, and explained why it doesn't think it should have to pay B any compensation. I emailed Cashplus to explain why I wasn't persuaded by the points it had made that I should change my mind.

Ultimately, now that I'm satisfied both B and Cashplus have had fair opportunity to respond, I'm ready to explain my final 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.

I've focused on what I think is the heart of the matter. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Having done so, I've reached the same conclusions I explained in my provisional decision and for the same reasons. I won't repeat here everything I said in my provisional decision.

In reaching my final decision, I've considered carefully everything B and Cashplus have said in response to my provisional decision. But ultimately these points haven't changed my mind. This is because:

- Cashplus has argued that B hasn't suffered a loss, and that only Mr P has. But I already carefully considered this point before I issued my provisional decision, explaining what I did about this in that decision. Nothing Cashplus has said in response has caused me to change my mind about this. For the reasons I've already explained, I don't think it would be fair to say B hasn't suffered a loss.
- Cashplus has argued that B already received its refund from Bank A under the Contingent Reimbursement Model (CRM); and that as Cashplus wasn't a signatory

to the voluntary CRM, it would not be fair nor reasonable to reimburse B further. But I'm not persuaded that just because Bank A refunded to B half its loss under the voluntary CRM, that this means it wouldn't be fair for Cashplus to pay compensation to B where it didn't act fairly and reasonably, and where its acts and omissions caused B loss as I've explained I'm satisfied they did. I explained in my provisional decision why I'm persuaded Cashplus did not act fairly and reasonably, and I haven't changed my mind about this. On a similar note, B, in its response to my provisional decision, has copied some information to our service about the CRM, but this doesn't apply to this complaint as the CRM code is voluntary and Cashplus wasn't a signatory to it.

- Cashplus has referenced recent case law in respect of duties and contractual relationships. In essence, it has argued that it owed no contractual duty to B, and that its primary duty was to execute its customer's instructions, not to protect third-party victims of fraud. However, our service is aware of previous case law of similar findings that there is no contractual duty. But our approach is about the wider regulatory position, failings, causation, and what's fair and reasonable. DISP 3.6.1R states "The *Ombudsman* will determine a *complaint* by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case". And DISP 3.6.4R goes on, "In considering what is fair and reasonable in all the circumstances of the case, the *Ombudsman* will take into account (1) relevant: (a) law and regulations; (b) regulators' rules, guidance and standards; (c) codes of practice; and (2) (where appropriate) what he considers to have been good industry practice at the relevant time". The point I am making is that I am required to take the regulatory position into account. And taking everything into account, I think it's reasonable to expect a payment service provider such as Cashplus to take reasonable steps to ensure its accounts aren't used to further financial crime or misappropriate funds. I understand this position has previously been made clear to Cashplus by my fellow ombudsmen in previous decisions about Cashplus acting as a receiving payment service provider where we have upheld cases based on this, notwithstanding its points about there being no contractual duty.
- In terms of a fair compensation amount, B has argued it should receive greater compensation (£62,500, compared to my provisional award of £31,250) and Cashplus has argued that B should receive less compensation (essentially none). But having thought about everything again, I still think the award I explained in my provisional decision strikes a fair balance here, and for the same reasons as I already explained in my provisional decision. Cashplus has sought to paint B and/or Mr P as having been grossly negligent in continuing with the scam payments in the face of clear red flags. But I think gross negligence is overstating things. On the other hand, I also don't accept that Mr P having been unwell and under work-related stress completely removes the overall position here that I would reasonably have expected B to have been more careful with these payments – specifically by the time it got to these latter payments that I've explained I think Cashplus ought to have been able to prevent the loss of. In circumstances like this, I'm satisfied it's fair for B to shoulder responsibility for 50% of the loss, and for Cashplus to shoulder the remaining 50% in circumstances where but for its failings such loss most likely wouldn't have occurred.

I've considered everything B and Cashplus has said. But for the reasons I've explained, I've reached the same conclusions as in my provisional decision.

### **My final decision**

For the reasons explained, I uphold this complaint in part and I direct Zempler Bank Limited trading as Cashplus to pay B:

- £31,250; plus
- Interest on this amount calculated at 8% simple per year from the date of loss to the date of settlement. If Cashplus deducts tax from this interest, then it should send B the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 14 October 2025.

Neil Bridge  
**Ombudsman**