

## **The complaint**

Mr K, as director of the company L, has complained that Advanced Payment Solutions Limited (trading as Cashplus Bank) won't refund transactions he says he didn't make or otherwise authorise, which were the result of a scam.

## **What happened**

Mr K received a pop-up message that his security had been compromised. He called the listed phone number and spoke to scammers impersonating technical support. They knew his information and took him through a security process. They persuaded Mr K to download a technical support app which allowed them access to his phone, saying it was to secure his accounts. Using this remote access, the scammers transferred money from L's other account to L's Cashplus account, then on from the Cashplus account to themselves. The total transferred was £5,700.

Cashplus held L liable for the payments in dispute on the basis that they thought Mr K had been grossly negligent.

Our investigator looked into things independently and upheld the complaint. Cashplus didn't agree, so the complaint's 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.

It is not in dispute that these payments were unauthorised. And under the Payment Services Regulations, the starting position is that Cashplus are liable for payments which their customer did not authorise.

Cashplus can still hold L liable for these payments if Mr K (on behalf of L) failed to keep the account safe either intentionally or through acting with gross negligence.

I do understand where Cashplus is coming from, and I certainly agree that Mr K was negligent in how he handled this situation. He could and should have done things such as looking up the phone number provided, looking up the real phone number for technical support, and questioning what he was being told. In future, Mr K should not give strangers full access to his device without objectively checking what's really going on.

However, *gross negligence* is a much higher standard than normal negligence. It involves an actual appreciation for the risks involved and a very serious disregard to those risks.

Here, the scammers created an environment of trust with Mr K, taking measures to imitate a genuine support function, taking him through a fake security process, using their knowledge of his information to seem genuine, and asking him to download a genuine verified app that really is used for technical support. This was a sophisticated scam, where Mr K didn't realise he was putting L's account at risk. In fact, ultimately Mr K was trying to *protect* the account from the risk of harm by doing what he did.

So while I do sympathise with Cashplus' position, and while I agree that Mr K was negligent and should take greater care in future, I do not think Mr K's actions quite meet the bar of *gross* negligence in this case. And given that he was trying to protect L's account, I certainly don't think that he *intentionally* failed to keep it safe, either.

This means that under the Payment Services Regulations, the unauthorised payments must be refunded. L's other bank have already refunded £2,250 due to their role in the matter, and of course we would not expect L to receive a refund of the same amounts twice over. So Cashplus need only to refund the remaining £3,450. They should also add 8% simple interest on this amount, to compensate L for the time it's been without its money. This is the same rate the courts use in situations like this.

### **Putting things right**

Advanced Payment Solutions Limited (trading as Cashplus Bank) should:

- refund £3,450 to L; and-
- pay simple interest to L on that loss, at the rate of 8% simple a year, payable from the date the disputed payments were debited until the date the loss is refunded<sup>†</sup>.

<sup>†</sup> If Cashplus considers that they're required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, they should tell L how much tax they've taken off. It should also give L a tax deduction certificate if it asks for one. L may be able to reclaim the tax from HMRC if it doesn't normally pay tax.

### **My final decision**

For the reasons I've explained, I uphold L's complaint, and direct Advanced Payment Solutions Limited to put things right by doing what I've said above.

If L accepts the final decision, Advanced Payment Solutions Limited must pay the redress within 28 days of the date our service notifies them of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 9 November 2023.

Adam Charles  
**Ombudsman**