

## **The complaint**

A company, which I'll refer to as E, complains that Advanced Payment Solutions Limited (trading as Cashplus Bank) won't refund payments it didn't make.

Mr G, who is a director of E, brings the complaint on E's behalf.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for 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've reached the same outcome as our investigator for these reasons:

- Cashplus hasn't disputed this concerns unauthorised payments. However, in line with the Payment Services Regulations 2017, it refused to refund them because it asserts Mr G failed with gross negligence to comply with the terms of the account and keep E's personalised security details safe.
- Having considered the circumstances carefully, I'm not persuaded Cashplus has shown that's the case. I'll explain why.
- Mr G received a text message that appeared to come from Cashplus – it referenced a request to update the phone number on E's account and told him someone would contact him shortly. He then received a call which similarly appeared to come from Cashplus's number, and he said the caller knew some of his personal information.
- Mr G recalled he was told that someone had attempted to add a new device to E's account and to spend money. To stop this, he was asked to forward an email to an email address which mentioned Cashplus as well as share a one-time code he'd receive by text.
- Taking this all into account – how the communication appeared and the personal information they knew – I can see why he was persuaded they were calling from his genuine bank. So I can also understand why he followed their instructions, particularly when he been tricked into thinking E's money was at risk.

- Cashplus point out that the email explains it's to continue logging in to E's account and that if Mr G completed his due diligence, he'd likely have realised it was fraud and the email address was fraudulent.
- I'm mindful that it's easy to be critical of his actions with the benefit of hindsight. But Mr G was acting in the heat of the moment, when he trusted the caller was from his bank and he was panicked that E was at risk of fraud. In these circumstances, I don't think Mr G's actions meant he acted with very significant carelessness to conclude he failed with gross negligence. After all, Mr G, like most people, isn't an expert in fraud or Cashplus's procedures. So I can see how the fraudster's instructions didn't ring alarm bells.
- So I don't think Cashplus has shown Mr G failed with gross negligence. It follows that, in line with the PSRs, I don't consider E can be fairly held liable for these unauthorised payments and Cashplus needs to put things right – by refunding E's losses from the unauthorised payments alongside 8% simple interest per year to compensate it for the time it's been out of pocket.

### **My final decision**

For the reasons I've explained, I uphold E's complaint. Advanced Payment Solutions Limited must:

- Pay E the total of the unauthorised payments, less any amount recovered or refunded – I understand this to be £8,852.55.
- Pay 8% simple interest per year on these amounts, from the dates of the unauthorised payments to the date of settlement (less any tax lawfully deductible).

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

Emma Szkolar  
**Ombudsman**