

The complaint

S and S (X Ltd) complain that Zempler Bank Limited trading as Cashplus Bank (CPlus) won't refund all the money the company lost in a safe account scam.

What happened

The customer involved here is a limited company – which I will refer to as 'X Ltd' in this decision.

What X Ltd says:

X Ltd is represented by Mr S, one of its directors. He says:

- On 23 March 2024, he took a call from someone claiming to be from CPlus.
 - The caller said X Ltd's account had been hacked.
 - Mr S received a text message from what appeared to be from CPlus – as it showed up on his phone as being CPlus's messaging service. It said 'your card has been cancelled'.
 - The caller said the account needed to be changed to protect its money.
 - Mr S had a suspicion so he decided to call CPlus on its number. But while doing so, he got another call from 'Cashplus' and it showed up as the official CPlus number – so he thought it was genuine.
 - He was taken through 'security checks' and was persuaded to transfer money to three 'safe accounts' in the name of the limited company and Mr S. New account numbers and a sort code was provided by the caller.
 - He got further text messages from the same 'Cashplus' address giving him one time passcodes (OTP), and he also got an in-app authorisation request from 'Cashplus' on his phone regarding one payment – which he authorised.
 - Transactions totalling £96,510.20 were made to the new accounts.
 - Mr S realised this was a scam when his wife got a similar call on her phone and her business partner said one of the payments (to a crypto exchange) may be a scam.
- (continued)**

The payments were:

Date		Payment	Amount
23 March 2024 – 16.09	1	Faster payment to new account (1) –	£24,905.05**

		X Ltd	
23 March 2024 – 16.30	2	Faster payment to new account (1) – X Ltd	£19,805.05**
23 March 2024 – 16.55	3	Faster payment to crypto exchange – authorised in app	£8,500.00
23 March 2024 – 17.11	4	Faster payment to new account (2) - X Ltd savings	£19,800.00
23 March 2024 – 17.36	5	Faster payment to new account (3) – Mr S savings	£23,500.05
23 March 2024 – 17.48	6	Faster payment to new account (3) - Mr S savings	<i>[£9,000.00 (cancelled by CPlus)]</i>
23 March 2024 – 17.46	7	Faster payment to new account (1) - X Ltd	<i>[£11,000.00 (cancelled by CPlus)]</i>
Payments made			£96,510.15

**Later refunded by CPlus

- Mr S called the real CPlus at 8.07pm in the evening of Saturday 23 March 2024 and reported the scam.
- But – CPlus' fraud department was then closed and he was asked to call back on Monday morning – 25 March 2024 – this he did, at around 8.50am.
- CPlus blocked the account following Mr S' call in the evening of 23 March 2024 and the final two payments were stopped.

CPlus refunded the first two payments and managed to recover £11,160.08 from the recipient bank. After the sixth and seventh payments were cancelled by CPlus, X Ltd was left with a shortfall of £40,639.97.

Mr S says he has suffered emotional and mental trauma and he's had panic attacks every time he gets a message or email from CPlus. On occasions, he hasn't been able to work because of the worry and effect the scam has had on him. He says he constantly thinks about the incident.

He says CPlus should've done more to protect the accounts. The payments were out of character and there weren't any warnings or interventions by the bank. He says the bank should refund the full amount of the payments made.

What CPlus said:

CPlus said they'd contacted the recipient bank on Monday 25 March 2024 and managed to recover £11,160.08. They made a decision to refund payments one and two – so in all, the

bank reimbursed £55,870.18.

CPlus said they wouldn't refund payments three, four and five. This was because the third payment was to a crypto exchange and was authorised by Mr S. The firm had also sent a warning to Mr S when he set up that new payee. He confirmed he wished to proceed. CPlus said this third payment didn't fit the profile of a safe account scam, and therefore didn't cause a concern.

CPlus said they wouldn't refund the money under the Lending Standards Board Contingent Reimbursement Model Code (CRM Code) as the firm hadn't signed up to it.

Our investigation so far:

X Ltd brought its complaint to us. Our investigator said:

- CPlus should refund the outstanding amounts paid, plus interest at 8% per annum.
- While the business account had a history of large payments, the fact that there were five large payments in the space of an hour was unusual.
- The payment to the crypto exchange was characteristic of a high risk payee. There wasn't any history of previous payments for such a purpose.
- CPlus provided no warnings or intervention at all; if they had, it would quickly have been shown to be a safe account scam and the payments stopped.
- There wasn't a Confirmation of Payee (COP) check.
- CPlus could've started recovery processes earlier – Mr S called the firm at 8pm on 23 March 2024 but CPlus didn't contact the recipient bank until 25 March 2024. While he accepted that the fraud department was closed in the evening of 23 March 2024, the firm still had to attempt recovery immediately after the scam was reported. If they had, it was likely a full (or higher) recovery could've been achieved.

CPlus didn't agree and asked that an ombudsman look at the complaint. The firm said:

- Mr S was presented with a warning when each new payee was set up – this included a warning to 'check for fraud' if being asked 'to send money to a new account'.
- There was 20 minutes between the first two payments – so Mr S could've thought about what was happening.
- And there was 90 minutes from the first payment to the last one – so again, Mr S had time to consider what was going on.
- There was a general warning about safe account scams presented to customers at log on in mobile banking and online banking.

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'm sorry to hear that X Ltd has lost money in a cruel scam. It's not in question that the company authorised and consented to the payments in this case. So although it didn't intend for the money to go to a scammer, it is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider CPlus should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether CPlus acted fairly and reasonably in its dealings with X Ltd when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because CPlus haven't signed up to the Code.

The first consideration here is: if the payment was of a sufficient size and was out of character with how X Ltd normally used its account – then we would've expected CPlus to step in and ask questions.

This is a difficult judgment in this case. This was a business account and I can see there were frequent, large payments made over its history – since 2020. There is an argument to say that CPlus didn't need to intervene in the first (or even second) payment for that reason – because we can't expect every payment to be questioned by a firm.

But in this case, CPlus made the decision to refund the first and second payments anyway, so there is no need for me to consider that point any further.

After that, I can see there was a pattern of rapid, large value payments to new payees – all within 90 minutes of each other. And that was an unusual thing for X Ltd to do. And – such was the pattern and velocity of the payments – that this had all the characteristics of a scam.

So, I think it's reasonable to have expected CPlus to intervene, hold the payments and contact Mr S (its director) about what was going on.

CPlus was the expert in such matters and if they'd intervened, held the payments and contacted Mr S we would have expected them to ask open questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How were you contacted about it?
- How were you given the bank account details where the money was to be paid to?

If such questions had been asked it is probable that the safe account scam would've been uncovered and the payments prevented – safe account scams were, by this time, fairly common and CPlus would've been able to spot this.

But here – there was no intervention by CPlus at all – there wasn't a call, text message warning or in app/ chat warning sent. I accept that CPlus have argued there was a safe account scam warning at log on (for all customers). But in this case, I don't think it's reasonable that CPlus rely on that. Because of the nature of the payments, we would expect to see a tailored warning sent to X Ltd , or a human intervention, but this didn't happen here.

CPlus have argued that the third payment (to a crypto exchange) was different and couldn't be considered as a high risk/scam payment. But I don't see it that way – for me, it was another payment in the series of payments made within a short time period.

CPlus have also said the time lag across all payments (90 minutes) was long enough for Mr S to consider what was going on. I appreciate this point - but equally, this was a sophisticated scam and Mr S has shown us that he was calling the real CPlus during this time; but then took a call from the scammer 'CashPlus' - this was a spoofed number showing a 'real' CPlus. And this then then convinced him to continue with the payments. We've seen Mr S's call log to show the timing of those calls. So, for that reason, he carried on.

So, I hold CPlus liable to refund all the payments on this occasion.

Contributory Negligence:

But that's not the end of the story here. I also considered whether X Ltd could've done more to protect itself and whether it should therefore reasonably share some of the losses. And I don't think it should. I say that as:

- This was a very sophisticated and convincing scam which included a spoof phone number; spoof texts (which appeared to come from CPlus); spoof in-app authorisations; a spoof OTP sent to Mr S; and the scammers had details of Mr S' business (and his wife's) and his current and previous addresses.
- Under these circumstances, I cannot see how X Ltd could've prevented this scam – without any intervention from CPlus.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether CPlus took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. And here, 'quickly' means contacting recipient bank with an hour of the scam being reported.

I can see Mr S reported it to CPlus at 8.07 pm on Saturday 23 March 2024 and CPlus contacted the recipient bank at 10am on Monday 25 March 2024. While I accept that the fraud department of CPlus was closed after 8pm on 23 March 2024, we would still expect CPlus to have processes in place to deal with such scams.

Given that a partial recovery was achieved after contact was made on 25 March 2024, it is more likely than not that a higher amount may well have been recovered if that was done earlier.

So, for me, that gives further weight to my decision that X Ltd should be given a refund of all the payments made.

Putting things right

CPlus must refund payments three, four and five (£51,800.05), plus interest at 8% per

annum simple, less the recovery of £11,160.08.

My final decision

I uphold this complaint. Zempler Bank Limited trading as Cashplus Bank must:

- Refund payments three, four and five (£51,800.05), plus interest at 8% per annum simple – from the date of the payments to the date of settlement, less the recovery of £11,160.08.

Under the rules of the Financial Ombudsman Service, I'm required to ask S and S to accept or reject my decision before 25 October 2024.

Martin Lord
Ombudsman