

## **The complaint**

Mrs C complains that The Co-operative Bank Plc (Co-op) hasn't refunded all her losses after she fell victim to a scam.

## **What happened**

The background to this complaint is well known to both parties. And so, I won't go into all the details about what happened in this final decision. Instead, I'll give a broad overview and include key details.

Mrs C came across a company that I'll refer to as M. M claimed to be able to offer various services, all with the aim of achieving what it described as 'financial freedom'. M said this could be achieved by exploiting various loopholes in the law and in signed contracts so that debts – including credit cards, loans, and mortgages – could be annulled and any payments towards those debts returned.

Mrs C made two payments to M to contract for its services: £1,500 was sent by bank transfer in February 2022; a further £1,000 was paid using Mrs C's debit card in April 2022.

When Mrs C didn't receive what she'd paid for she contacted Co-op to report that she'd been scammed.

Co-op investigated and, at the time, felt M was a genuine company but one that hadn't delivered what was promised; it didn't think Mrs C had been scammed. It proceeded to raise a chargeback on that basis, seeking recovery of the debit card payment from M's bank. This chargeback was successful as it went unchallenged by M, and so Mrs C received the money back. This is one of the reasons Co-op thought M was genuine.

As Co-op had concluded Mrs C had a civil dispute with M – rather than it being the case she'd been scammed – it said it wouldn't refund the bank transfer.

Mrs C was unhappy with that outcome and so brought the complaint to our service. One of our investigators considered the complaint. He found Mrs C had been the victim of a scam and that Co-op had reached the wrong conclusion. He went on to consider whether Co-op ought to have refunded Mrs C in full.

In doing so, he thought about the provisions of the Contingent Reimbursement Model (CRM) Code, to which Co-op is a voluntary signatory. The Code was established to see the victims of scams reimbursed their losses. But there are exceptions to reimbursement that a signatory firm may rely on. Our investigator found that one of those exceptions to reimbursement applied in Mrs C's case.

Our investigator noted that Co-op had discussed the bank transfer with Mrs C. And whilst Mrs C had initially lied about the purpose of her payment, she'd gone on to explain it was for a 'business transaction'. He felt Co-op did enough here, given the payment wasn't of sufficiently high value as to require an effective warning (as described in the CRM Code).

He went on to consider whether Mrs C had held a reasonable basis for believing she was engaged with legitimate parties for legitimate purposes at the time she made the payment. He didn't think she did. He found, in summary:

- the claims M made about what it could achieve were implausible and far too good to

be true;

- there was an FCA warning published about M on 8 March 2021.

He also thought about whether there was any other reason Co-op ought to refund Mrs C. He couldn't see that there was. In making that finding he considered what might have happened if Co-op had accepted Mrs C had been the victim of a scam from the outset. If it had done so, it ought to have contacted the bank that received Mrs C's money in an attempt to recover it. That led him to contact the receiving bank to ask about what had happened to Mrs C's money.

The receiving bank replied and provided evidence to show Mrs C's money had left the receiving account long before Mrs C reported the scam. That meant there was no prospect of recovering it, even if Co-op had contacted the receiving bank as soon as Mrs C reported the scam.

Mrs C didn't accept the investigator's findings and so the complaint has been passed to me for a 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'm sorry to disappoint Mrs C but I'm not upholding her complaint and for broadly the same reasons as our investigator. I'll not comment on everything Mrs C has said or on all the evidence she's provided. Instead, I'll cover the important aspects of the complaint and how they influence the outcome.

In making these findings I'm not saying that Mrs C hasn't been the innocent victim of a cruel scam. And I'm not saying she knew she was being scammed at the time but decided to proceed anyway. But it is for me to determine whether she ought, fairly and reasonably, to have been refunded by Co-op.

I mentioned the CRM Code in the background section of this decision. It's this Code that is of particular importance to Mrs C's complaint. Whilst the Code is in place to see the victims of scams refunded, firms like Co-op can choose not to reimburse a customer if it can be shown an exception applies. The two important exceptions are:

- did the customer ignore an effective warning given at the time the payment was being made?
- did the customer have a reasonable basis for believing they were transacting with legitimate parties for legitimate purposes?

The Code only applies to bank transfers, not card payments. And so, it isn't relevant to the payment Mrs C has had a refund for. The money from the card payment was returned to Mrs C via a different mechanism – a chargeback. Co-op raised the chargeback on the basis of goods/services not received (rather than as a scam) and the merchant (M) didn't defend it. That meant an automatic refund to Mrs C, regardless of the merits of her claim. The outcome of the chargeback, and the circumstances under which it was raised, has no bearing on the outcome of the bank transfer part of Mrs C's complaint.

#### *Did Mrs C ignore an effective warning given at the time the payment was being made?*

The Code sets out – under standards for firms – what constitutes an effective warning. It also sets out when one ought to be provided. I'm satisfied there was no requirement under the Code for Co-op to provide an effective warning to Mrs C.

That's because I don't find the payment clearly presented a risk of financial harm through fraud. It was relatively low in value, though I appreciate it represents a significant loss to

Mrs C. But given the amount being sent, and the lack of any other concerning features, I don't find Co-op needed to intervene in the payment.

Having said that, Co-op did ask Mrs C some questions. She wasn't entirely truthful with the Co-op and clearly didn't want to discuss the payment in detail. This limited how much Co-op could do to try and protect her. Overall, I find Co-op did enough in the circumstances.

*Did the Mrs C have a reasonable basis for believing she was transacting with legitimate parties for legitimate purposes?*

I can see why Mrs C wanted M's claims to be true. She's explained that she paid off her mortgage years ago and thought she'd be able to recover it and associated costs. But I find the proposal to be highly implausible, even farfetched. The suggestion that a long paid-off mortgage could somehow be deemed null and void, with a return of all funds paid to it just doesn't sound realistic. Particularly as it seems the suggestion was that this could happen without also giving up or losing the underlying asset – the home.

The same is true of the other claims of M, in having credit card and other loan debt written off through technicalities and loopholes.

Whilst there was a fairly well put together website it contains little of substance or proof of M's claims. Instead, the approach seems to be to obfuscate and confuse potential 'clients' with jargon.

There's nothing within the evidence Mrs C has provided that persuades me that M should have been regarding with anything other than suspicion.

Our investigator found that there had been an FCA warning about M live at the time Mrs C made the payment. Certainly, the date the warning was published suggests this was the case.

Mrs C argues that the warning was only updated to include all the detail about M after she contacted the FCA about the scam. She says there was otherwise nothing concerning published about M or the persons that worked for it.

In fairness, I can't be sure exactly what information was shown on the warning between March 2021 and the point Mrs C made the payment. There was something there, but it is possible it didn't include M's details. But, even if that were the case, the outcome of the complaint doesn't change. Even without the warning, I don't find Mrs C held a reasonable basis for believing she was transacting with legitimate parties for legitimate purposes, for the reasons I've already explained..

*Is there any other reason why Co-op ought fairly and reasonably to reimburse Mrs C?*

I do think Co-op ought to have recognised Mrs C had been the victim of a scam when she contacted it. I don't believe the fact the chargeback went undefended helped evidence M as an otherwise legitimate business.

Co-op ought to have contacted the receiving bank once Mrs C reported the scam. This would have been in an attempt to recover any of her funds that remained in the account.

But we now know that all her money had already been removed from the receiving account by the time she reported the scam; there was nothing left to return.

And so, whilst Co-op didn't do what I believe it fairly and reasonably ought to have done, there hasn't been any financial impact to Mrs C. There was never any prospect of her money being recovered, even if Co-op had acted immediately and seen through the request for a return of the funds.

I've considered all Mrs C has said and her wider circumstances. I do sympathise with her, and I do recognise she's been the innocent victim of a scam. I don't find, however, that it is for Co-op to reimburse her.

### **My final decision**

I don't uphold this complaint against The Co-operative Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 December 2023.

Ben Murray  
**Ombudsman**